

EXHIBIT A**RUST CONSTRUCTORS, INC.****SUBCONTRACT # 37602-SUB-003:****Client/Prime Contract/Task Order****AECOM Numbers:**

Client: U.S. Army Corp of Engineers Omaha District
 Prime contract #: W9128F20D0008/Task Order #:
 W9128F20F0155
 Prime contract (task order) pricing: Cost Plus

Project #: 37602
 Vendor #:
 FCAP Reference #:

Subcontractor:**Issued By:**

Hendrickson Transportation, LLC
 Address: 2762 310th Street
 City, State, ZIP: Hamburg, IA 51640-5069
 Attn: Darin Hendrickson, President
 Phone: 712-382-1505
 E-Mail: darinh@hendricksonent.com

Rust Constructors, Inc.
 6200 S. Quebec St.
 Greenwood Village, CO 80111
 Attn: Sandra Lambert
 Phone: 208-761-6713
 E-Mail: Sandra.lambert@aecom

Period of Performance:**Price****Payment Terms:**

From: June 19, 2020
 To: December 1, 2020;

Not to Exceed \$2,762,298.39

Article 6

TABLE OF CONTENTS

This agreement ("Subcontract" or "Agreement") between the parties, when referenced herein shall be deemed to include the documents referenced in the Table of Contents below:

Signature Form (this page)

Subcontract Agreement

Appendix A – Special Provisions

Appendix B – Supplemental Prime Contract Terms and Conditions

Appendix C – Statement/Scope of Work

Appendix D – Pricing/Fee Schedule of Values

Appendix E – Waivers and Releases

Appendix F – AECOM Subconsultant Anti-Bribery Corruption Compliance

Appendix G - Project Controls Requirements

Appendix H – Pay Application

This subcontract/order is certified for national defense use and you are required to follow all provisions of the Defense Priorities and Allocation System (15 CFR 700). This subcontract is rated as Not Rates.

The effective date of this Subcontract is the date of the last signature below.

By signing this agreement, Supplier hereby certifies that the small business size category(ies) indicated on the provided

☒ P2[DCS]-003-FM7, 8 or 9 ☐ SAM.gov Reps & Certs ☐ P2[DCS]-003-FM6 dated June 04, 2020 are current, accurate, and complete as of the time of this award.

By signing this agreement (in cases where the subcontract value is greater than \$35,000 and is not considered a commercial item), the subcontractor certifies that neither the subcontractor nor its principals is/are debarred, suspended, or proposed for debarment by the Federal Government as of the date of the subcontractor's execution of this Agreement.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Subcontract and agree to be bound accordingly.

HENDRICKSON TRANSPORTATION, LLC.**RUST CONSTRUCTORS, INC.**

Darin Hendrickson 6-19-20
 Signature Date

JJ Johnson
 Signature Date

Darin Hendrickson

JJ Johnson

Printed Name

Printed Name

President

Project Manager

Printed Title

Printed Title

SUBCONTRACT AGREEMENT

This Subcontract Agreement (“Subcontract”), effective this 19th day of June ,2020, is by and between Rust Constructors, Inc. (“Rust” or “AECOM” or “Company”), a Delaware corporation and Hendrickson Transportation, LLC, a Delaware corporation (“Subcontractor”), referred to individually herein as “Party” and collectively as “Parties.”

WITNESS THAT:

WHEREAS, Company has on the 19th day of May, 2020 entered into Contract Number **W9128F20D0008** (“Prime Contract”) with U.S. Army Corp of Engineers Omaha District (“Customer” or “Client), and

WHEREAS, Company wishes to retain Subcontractor to perform a certain portion of the work required by the Prime Contract, and

WHEREAS, Subcontractor is willing to undertake the performance of such work in accordance with the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

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ARTICLE 1 DEFINITIONS

Wherever used herein and printed with initial capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

Change Order – means a written order, signed by Company’s Subcontract Administrator, directing the Subcontractor to make a change that the Subcontract authorizes Company’s Subcontract Administrator to order without Subcontractor’s consent, subject to an equitable adjustment in price, schedule, and/or Subcontract terms and conditions. Change Orders may be used to (a) make administrative changes; (b) direct changes in the work, schedule, and/or Subcontract terms and conditions; or (c) issue stop work, suspension, or termination notices.

Modification – means a Subcontract modification that is signed by Company’s Subcontract Administrator and Subcontractor. Modifications may be used to (a) make negotiated equitable adjustments resulting from the issuance of a Change Order or (b) reflect other agreements of the parties modifying the terms of the Subcontract.

Sub-Subcontractor – Any person or entity retained by Subcontractor as an independent contractor to perform any portion of Subcontractor’s work; shall include sub-tier subcontractors, materialmen, suppliers, and vendors.

ARTICLE 2 THE WORK

- 2.1 **Statement/Scope of Work:** Unless otherwise specified in the Subcontract Documents, Subcontractor shall provide and assume full responsibility for all services, labor, materials, tools, equipment, machinery, transportation, and other items necessary to properly perform and complete Subcontractor’s work (the “Work” or “Project”), as set forth in Appendix C, at the location or locations specified therein. The Work shall be performed on a Firm Fixed Price and Fixed Unit Rates basis.
- 2.2 **Subcontractor Responsibilities:** The Work shall be carried out in accordance with the Subcontract Documents in a diligent and professional manner using qualified personnel and good and sufficient materials, tools, equipment, machinery, and other required items.

ARTICLE 3 SUBCONTRACT DOCUMENTS

- 3.1 **Subcontract Documents:** The Subcontract Documents are composed of the following:
 - 3.1.1 All written Modifications and Change Orders to this Subcontract;
 - 3.1.2 This Subcontract, including all exhibits and attachments, executed by Company and Subcontractor;
 - 3.1.3 The Prime Contract, but only to the extent that the Prime Contract relates to the Work and the terms and conditions under which the Work shall be performed.

- 3.2 **Prime Contract:** Where the Prime Contract is, or portions thereof are, attached at Appendix B, to the extent such terms and conditions are applicable to the Work, Subcontractor agrees to be bound to Company in the same manner and to the same extent as Company is bound to the Customer with respect to those terms and conditions, except as may be modified herein. In the event of any conflict or inconsistency between any provision of this Subcontract and the provisions of the Prime Contract, the more stringent, if determinable, shall govern. If stringency is not applicable, the provisions of this Subcontract shall govern, unless such an interpretation would cause Company to be unable to fulfill its obligations under the Prime Contract; in which case, an interpretation that would permit Company to fulfill its obligations under the Prime Contract shall prevail.
- 3.3 **Interpretation and Intent and Order of Precedence:** The Subcontract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with applicable industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Subcontract Documents, the Subcontract Documents shall take precedence, in the order in which they are listed below:
- 3.3.1 Appendix A – Special Provisions
 - 3.3.2 This Subcontract and any Modifications and Change Orders thereto
 - 3.3.3 Appendix B – General Provisions/Customer Requirements
 - 3.3.4 Appendix C – Statement/Scope of Work
 - 3.3.5 Appendix D – Pricing/Fee Schedule of Values
 - 3.3.6 Appendix E – Waivers and Releases
 - 3.3.7 Appendix F – AECOM Subcontract Anti-Bribery Corruption Compliance
 - 3.3.8 Appendix G – Project Controls Requirements
 - 3.3.9 Appendix H – Pay Application
- 3.4 **Other Documents:** Where Subcontractor's proposal is attached to the Statement of Work, it is attached only to provide a description of the Work and additional details concerning the cost of the Work set forth in Article 5.1 of this Subcontract. Any terms and conditions set forth in Subcontractor's proposal shall be deemed stricken and null and void. Either Party may use its standard business forms (such as purchase orders) to administer this Subcontract, but use of such forms shall be for convenience purposes only, and any typed or handwritten provision in conflict with the terms of this Subcontract and all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void.

ARTICLE 4 SUBCONTRACT TIME

- 4.1 **Schedule:** Subcontractor shall commence the Work beginning on the date of the Notice to Proceed issued by Company. This Subcontract shall be in effect through the end date shown on the signature page hereof, unless adjusted by a Modification or Change Order to this Subcontract, or terminated as provided herein. Upon execution by the Parties, this Subcontract shall have the effective date as set forth above and shall remain in full force and effect until all obligations related to the Work have been fulfilled, unless sooner terminated as provided herein.

- 4.2 **Delays:** Neither Party shall be liable to the other for delays or failure to perform caused by circumstances beyond that Party's control and due to no fault of its own or those for whom it is responsible, including, but not limited to, acts of God; fire; flood; war; sabotage; accident; labor dispute; shortage; government action, including regulatory requirements; changed conditions; delays resulting from actions or failure to act of Customer or third parties; site inaccessibility; or inability of others to obtain material, labor, equipment, or transportation, provided, and only to the extent that, such delays are not the result of the negligence of the Party claiming the delay. Should any of the above occur, then the date for completion or any other milestone date shall be adjusted for such delay in accordance with Article 13 of this Subcontract, provided, where Subcontractor is claiming delay, Subcontractor reports the delay to Company within five (5) days of its discovery. Notwithstanding the foregoing, any delays and resulting damages that arise out of, or relate to, problems caused by Customer or for which Customer is responsible shall be resolved pursuant to Article 18.2 of this Subcontract.
- 4.3 **Time of Essence:** Company and Subcontractor recognize that time is of the essence with respect to the performance of this Subcontract and that there is potential for financial loss by Company in the event that Subcontractor fails to complete the Work within the time specified in Section 4.1, above. Subcontractor agrees to pay Company for all damages, costs, and expenses incurred by Company and resulting from any inexcusable Subcontractor delay, including, without limitation, any associated liquidated damages assessed by the Customer against Company.

ARTICLE 5 SUBCONTRACT PRICE

- 5.1 **Consideration – Fixed Unit Rate (FUR) Level of Effort Method of Payment:** In consideration for undertaking and completing this Work, Company shall pay to Subcontractor on a fixed unit rate, Level of Effort basis with a not-to-exceed amount as shown on the signature page hereof, in accordance with the payment terms and conditions of the Subcontract Documents, inclusive of Article 6, Appendix B, and Appendix D (the "Subcontract Price"), unless adjusted by a Modification or Change Order to this Subcontract, or terminated as provided herein. The Subcontract Price includes compensation for Subcontractor's services and services of Subcontractor's Sub-Subcontractors, if any. Appropriate amounts have been incorporated in the fixed unit rate, level of effort price to account for labor, overhead, profit, and reimbursable expenses, and is inclusive of all federal, state, and local taxes, duties, and fees.
- 5.2 **Invoicing:** The portion of the fixed unit rate, level of effort invoiced amount billed for Subcontractor's services shall be based on the Subcontractor's actual production of services at the time of invoice preparation and shall be in accordance with the subcontractor's corresponding Appendix D – Fee Schedule.
- 5.3 **Not-To-Exceed Amount:** Should it become apparent to Subcontractor that the not-to-exceed amount may be exceeded, Subcontractor shall give Company written notice thereof. Promptly thereafter, Company and Subcontractor shall review the matter of services remaining to be performed and compensation for such services. Company shall either agree to such compensation exceeding said not-to-exceed amount, or Company and Subcontractor shall agree to a reduction in the remaining services to be rendered by Subcontractor so that total compensation for such services will not exceed said not-to-exceed amount when such services are completed. If Subcontractor exceeds the not-to-exceed amount before Company and Subcontractor have agreed to an increase in the compensation due Subcontractor or a reduction in the remaining services, the Subcontractor shall be solely responsible for any and all costs and expenses incurred by Subcontractor and Subcontractor's Sub-Subcontractors to the extent, if any, in excess of the not-to-exceed amount.

ARTICLE 6 PAYMENT TERMS AND CONDITIONS

- 6.1 **Payment:** Payment shall be made monthly for Work performed as of the date of Subcontractor's invoice. Payment shall be made within ten (10) days of Company's receipt of payment for Subcontractor's Work from the Customer. Invoices shall be prepared and submitted to Company in the manner and format specified in Article 6.4 and Article 6.5, below, and other applicable terms and conditions of the Subcontract Documents. Payment shall be made only on undisputed portions of invoices for Work properly performed and invoices prepared in accordance with the terms and conditions referenced above. Receipt of payment from the Customer is a condition precedent for Company's obligation to pay Subcontractor. Except as otherwise provided by statute not subject to waiver, Subcontractor hereby assumes the risk of the Customer's nonpayment for Subcontractor's Work, without recourse to Company, provided that Company shall make a good faith effort to obtain such payment from the Customer. Subcontractor shall notify Company of any overpayment by Company within five (5) days after receipt of payment from Company and remit to Company such overpayment within ten (10) days thereafter.
- 6.2 **Retention:** Company may retain a percentage from the progress payments in accordance with the Prime Contract or, if no retention is specified therein, a maximum of ten percent (10%) of the amount of each invoice. The retention shall be paid when Company is paid in accordance with the Prime Contract or, if not specified therein, within thirty (30) days after completion of the Work and acceptance of all deliverables. Company may also retain from payments due Subcontractor an amount Company deems sufficient to cover any claim or potential claim from the Customer or a third party related to Subcontractor's performance under this Subcontract. Company may retain additional amounts if Subcontractor fails to meet the quality or performance requirements of the Statement of Work; fails to maintain the agreed-to schedule for causes within Subcontractor's control; fails to pay Sub-Subcontractors; or causes the imposition of fines, penalties, liens, or other levy upon Company or the Customer.
- 6.3 **Travel:** Local travel shall be at Subcontractor's expense. Any travel to be reimbursed must be pre-approved in writing, or if granted orally, must be confirmed in writing in accordance with the terms and conditions herein. Local travel is hereby defined as travel within a fifty (50)-mile radius of Subcontractor's local office. Approved travel required during the performance of this Subcontract shall be subject to the terms and conditions and applicable rates as set forth in federal travel regulations and negotiated as a separate cost.
- 6.4 **Invoicing Instructions:** Subcontractor shall submit invoices with the following information and such other information as Company may reasonably require: All invoices must clearly indicate the name and address of Subcontractor, invoice date, Subcontract number, name and address of Subcontractor official to whom payment is to be sent, and description of services performed and costs incurred related thereto as of the date of Subcontractor's invoice. Each copy of the invoice shall contain the following certification that is signed by an appropriate person of Subcontractor's organization: *"I certify that all expenditures reported or payments requested are for appropriate purposes and that payment on account thereof has not previously been received. I further certify that, to the best of my knowledge and belief, (1) the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Subcontract; (2) payments to Sub-Subcontractors and suppliers have been made from previous payments received under the Subcontract, and timely payments will be made from the proceeds of the payment covered by this certification in accordance with Sub-Subcontractor subcontract agreements; and (3) this request for progress payments does not include any amounts that Subcontractor intends to withhold or retain from a Sub-Subcontractor or supplier in accordance with the terms and conditions of the Subcontract agreements."*

Subcontractor's invoice shall constitute Subcontractor's representation to Company that (i) the Work was performed consistent with the Subcontract Documents; (ii) the Work has progressed to the point indicated in the invoice; (iii) Subcontractor's Sub-Subcontractors have been paid all amounts previously received by Subcontractor from Company on account of their services or work in accordance with Subcontractor's contractual obligations to such parties; and (iv) there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Work. Invoices shall be submitted to Company with an acceptable executed "waiver and release of claims" from Subcontractor and from each Sub-Subcontractor for whom payment is being sought. If the waiver and release provided is conditional, Company reserves the right to pay the Sub-Subcontractor directly or pay Subcontractor with a two-party check

All invoices submitted **must** contain the following required information:

- Purchase Order Number and Purchase Order Line Number (if applicable).
- Company Project Number
- Company Employee Contact Name (Note: Subcontract Administrator name, if available)

A delay in payment can result if the above information is not represented on the invoices.

Invoice Submission:

- Electronic Invoicing is the preferred invoice submission method of Company. Invoices shall be submitted to Ted Sheehan, ted.sheehan@aecom.com

6.5 **Final Invoice:** With the request for final payment, Subcontractor shall furnish satisfactory proof that all outstanding bills incurred by Subcontractor for all services, labor, materials, tools, equipment, machinery, transportation, and other items necessary to properly perform and complete Subcontractor's work have been paid, and Subcontractor shall provide a legally effective "waiver and release of claims" from Subcontractor and each Sub-Subcontractor used in connection with the Work. If the waiver and release provided by any of Subcontractor's Sub-Subcontractors is conditional, Company reserves the right to pay the Sub-Subcontractor directly or pay Subcontractor with a two-party check. Notwithstanding any other provision in this Subcontract to the contrary, Subcontractor is required to submit the final invoice under this Subcontract not later than ninety (90) days after completion of the Work. Payment of any invoices received after that time may be denied by Company in its sole discretion. No claims for additional compensation will be considered after submittal of the final invoice, except those claims, if any, previously noticed to Company and remaining unsettled at the time of final payment.

6.6 **Backcharges:** Upon identification of an actual or anticipated backcharge for costs sustained by Company or the Customer in connection with the performance of Work that is Subcontractor's responsibility under this Subcontract, Company will provide Subcontractor a written notice describing the Work to be performed, the anticipated schedule for performance, and the cost to be charged to Subcontractor. Backcharges may include (without limitation): (i) direct labor cost; (ii) direct material cost, including shipping, handling, and storage; (iii) indirect costs allocable thereto; and (iv) any taxes, levies, duties, fees, assessments, and/or miscellaneous costs resulting from the performance of backcharge Work. Subcontractor shall have the option of performing or re-performing the Work (as applicable), if acceptable to Company, or agreeing to pay Company for the backcharge costs. If Subcontractor refuses to perform or re-perform the applicable Work or agree to pay Company for the backcharge costs, within two (2) days after receipt of Company's

notice, Company may proceed with the backcharge Work and may retain, deduct, and/or offset monies due to Company pursuant to this Article from monies due to Subcontractor under this Subcontract. Any amounts paid by Company that Subcontractor is obligated to pay pursuant to this Subcontract or otherwise shall be promptly paid to Company by Subcontractor. If not paid, Company may retain, deduct, and/or offset such amount from any amounts then or thereafter due to Subcontractor under this or any other agreements or subcontracts with Subcontractor. These rights of payment and retainage, deduction, and/or offset are in addition to Company's right to indemnity pursuant to Article 15, and any other rights provided by this Subcontract, or at law or in equity. Subcontractor agrees that Company retains the right to make such deduction or offset at any time prior to and including final payment and that the imposition and deduction and/or offset of such monies shall not be subject to any notice or claim provisions of this Subcontract.

- 6.7 **Disallowed Payments:** If any amount paid by Company to Subcontractor is disallowed by the Customer's cognizant audit agency or the contracting officer of the Prime Contract as an item of unallowable cost under the Prime Contract, Subcontractor shall, upon written demand by Company, promptly repay to Company the disapproved amount. If Company is required, because of any action of the Customer, to refund or credit to the Customer any amount with respect to an item of cost for which Company has reimbursed Subcontractor, Subcontractor shall, upon written demand of Company, promptly repay to Company the disapproved amount. If, however, Company should recover any disallowed amount, or part thereof, Company shall pay such allocable amount to Subcontractor. Subcontractor agrees that Company may retain, deduct, and/or offset monies due to Company pursuant to this Article from monies due to Subcontractor under this Subcontract. Subcontractor further agrees that Company retains the right to make such deduction or offset at any time prior to and including final payment, and that the imposition and deduction and/or offset of such monies shall not be subject to any notice or claim provisions of this Subcontract.

ARTICLE 7 COMMUNICATIONS

- 7.1 **Subcontract Administration:** Subcontractor communications with Company regarding prices, terms, schedule, financial actions, scope of work changes, or other discussions that purport to modify Subcontractor's obligations under this Subcontract shall be made with Company's designated Subcontract Administrator only. Agreement(s) and/or actions taken by Subcontractor that, by their nature, effect a change to this Subcontract, shall only be binding upon Company when such agreement or action is specifically authorized in writing by Company's designated Subcontract Administrator. All correspondence between Subcontractor and Company shall be addressed to Company's designated Subcontract Administrator. For purposes of this Subcontract, the following individual is the Company designated Subcontract Administrator:

Name:	Sandra Lambert
Phone:	208-761-6713
Title:	Subcontract Administrator
Fax:	N/A
Email:	Sandra.lambert@aecom.com
Address:	6200 S. Quebec St. Greenwood Village, CO 80111

Communications with Subcontractor shall be addressed to Subcontractor's Project Manager at the following address:

Name: Darin Hendrickson
Phone: 712-382-1505
Title: President
Fax: N/A
Email: darinh@hendricksonent.com
Address: 2962 310th St
Hamburg, IA 51640

All communications between the Parties shall be sent to the respective address shown above, or to such other address that the receiving Party may from time to time give notice to the other Party in writing. Rejection of, refusal to accept, or the inability to deliver any communication to Subcontractor because of a change in address for which no notice was given shall be deemed to have been received by Subcontractor on the date of such rejection, refusal to accept, or inability to deliver to Subcontractor.

- 7.2 **Communications with Customer or Other Third Parties:** Except as may be set forth in FAR 52.219-9, all communications with the Customer and/or applicable governmental regulatory agencies related to this Subcontract shall be exclusively through or pursuant to the express written direction of the Company Subcontract Administrator. Subcontractor shall direct inquiries from Customer and/or governmental regulatory agencies to Company for appropriate response. Should Customer and/or the governmental regulatory agency insist on communications directly with Subcontractor, Subcontractor shall promptly (but in no event more than one [1] business day after the occurrence of such event) advise Company of the nature, extent, and substance of such communications.

ARTICLE 8 SUBCONTRACTOR'S RESPONSIBILITIES

- 8.1 **Independent Contractor:** Nothing contained in this Subcontract shall be construed to create a partnership, joint venture, or employer/employee or principal/agent relationship between Company and Subcontractor or between the Customer and Subcontractor. Subcontractor shall be solely responsible for all taxes, contributions, fees, and other amounts imposed by law, including, but not limited to, workers' compensation, unemployment insurance, social security, income tax, and/or other employment-related laws. Subcontractor and Subcontractor's Sub-Subcontractors and their respective directors, officers, and employees shall not be entitled to any employment benefits provided by Company to its employees. Subcontractor shall be solely responsible for the means and methods for the performance of the Work. Subcontractor shall have no authority to make commitments of any form or kind on behalf of Company or the Customer.
- 8.2 **Employees of Subcontractor:** Employees of Subcontractor shall, at a minimum, be lawfully eligible to work at the location they are employed by Subcontractor and shall satisfy any Customer requirements for citizenship, work eligibility, or other similar status specified by Appendix B or by the Prime Contract or task order. Subcontractor represents that it has and commits its expertise, experience, personnel, and resources to properly perform the Work, and that all personnel engaged in the Work shall be fully qualified, authorized, licensed, trained, and permitted as required by applicable law and the requirements of this Subcontract or the Prime Contract to perform the Work. Subcontractor shall remove any employee or Sub-Subcontractor from performance of the Work if so directed in writing by Company or the Customer.

- 8.3 **Equal Opportunity and Non-Discrimination:** Subcontractor shall not discriminate against any person on the basis of race, color, creed, religion, national origin, ancestry, sex, age, marital status, physical disability, or protected veteran status in the performance of the Work under this Subcontract. Without limitation, Subcontractor certifies that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, sex, age, marital status, physical disability, or protected veteran status. Further, Subcontractor shall promote affirmative action in its hiring practices and employee policies for minorities and other designated classes in accordance with federal, state, and local laws, including, but not limited to, Executive Order 11246, as amended. **Company and Subcontractor shall abide by the requirements of 41 Code of Federal Regulations (CFR) Sections 60-1.4(a), 60-300.5(a), and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors, such as Company and Subcontractor, take affirmative action to employ and advance in employment individuals without regard to race, color, creed, religion, national origin, ancestry, sex, age, marital status, physical disability, or protected veteran status.** In addition, in compliance with federal, state, and local laws, Subcontractor shall not exclude from participation under this Subcontract any employee or applicant for employment on the basis of race, color, creed, religion, national origin, ancestry, sex, age, marital status, physical disability, or protected veteran status.
- 8.4 **Permits and Licenses:** Except as specifically otherwise provided by the Subcontract Documents, Subcontractor has or shall have, prior to the commencement of any Work, all necessary business and professional licenses, permits, and other necessary federal, state, county, municipal, or other licenses as may be required to enable Subcontractor to perform the Work required hereunder.
- 8.5 **Certifications:** By executing this Subcontract, Subcontractor warrants that, for the duration of this Subcontract and any longer period if required by the Prime Contract, Subcontractor meets and shall continue to meet all disclosure obligations and certifications required for performance of the Work, including, but not limited to, any applicable certifications set forth in the Prime Contract. Subcontractor shall promptly (but in no event more than two [2] business days after any such change) provide notice to Company of any changes to such certifications.
- 8.6 **Standard of Care:** Subcontractor shall perform the Work in accordance with that degree of care and skill ordinarily exercised by members of the same profession currently performing the same or similar services under the same or similar circumstances, unless a higher standard is set forth elsewhere herein or in the Prime Contract, in which case that higher standard shall apply. Subcontractor shall be solely responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, calculations, reports, documents, or other information (“Deliverables”) to be provided under this Subcontract, and shall, without additional compensation, correct or revise any errors or deficiencies in any Deliverable promptly upon notice or discovery thereof. Review, inspection, approval, acceptance of, or payment by Company for the Work does not release or otherwise waive Subcontractor’s sole responsibility for the proper performance of the Work.
- 8.7 **Subcontracting:** Subcontractor shall not further subcontract any services or portions of the Work to be performed under this Subcontract, except as specified in Subcontractor’s accepted proposal, without prior written consent from Company. Neither this Subcontract nor any Sub-Subcontract shall create any contractual relationship between any Sub-Subcontractor and Company or the Customer, nor any liability of Company or the Customer to any Sub-Subcontractor. Company reserves the right in its sole discretion to reject a request to engage or retain any such Sub-

Subcontractor. In the event Subcontractor subcontracts any portion or the whole of this Subcontract without the prior written consent of Company, such subcontracting shall be a material breach of this Subcontract for which Company may, in its sole discretion, terminate this Subcontract, in whole or in part, for default. In the event Company does not terminate this Subcontract, Subcontractor shall be and shall remain responsible to Company for the proper performance of the entire Work.

- 8.8 **Meetings:** Subcontractor shall attend periodic meetings or events as may reasonably be required by Company for the proper coordination of the Work. Subcontractor shall be prepared to accurately report on the current and projected status of the Work at those meetings or events and at such other times as requested by Company.
- 8.9 **Cooperation:** Subcontractor shall cooperate and coordinate with the Customer and Company personnel and other contractors and subcontractors who may be working on the site so that the Work can be completed in an orderly and coordinated manner and without unreasonable disruption. Particular attention shall be paid to such matters as safety, use, and disruption of utilities; allocation of storage, work space, and parking; and security and general policing of the Project site.
- 8.10 **Publications:** Subcontractor shall not publish or publicly disseminate any information or data derived or obtained from or in connection with any services rendered hereunder without the prior written consent of Company.

ARTICLE 9 COMPLIANCE WITH LAWS

- 9.1 No Party to this Agreement shall, directly or indirectly, undertake nor cause nor permit to be undertaken any activity that:
- 9.1.1 is illegal under any applicable laws or regulations, or;
 - 9.1.2 would have the effect of causing Company or its subsidiaries or affiliates to be in violation of the applicable laws or regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act or UK Bribery Act.
- 9.2 In connection with this Agreement, no Party shall give, offer, promise, or authorize, directly or indirectly, anything of value to:
- 9.2.1 an official, officer, employee or any other person acting in an official capacity for or on behalf of any government (including any department, agency, or instrumentality thereof), state-owned enterprise, international organization or any subdivisions, agents or advisors thereto, whether paid or unpaid (any such person referred to collectively as "Official"), including the government(s) of the territories in which work will be performed hereunder;
 - 9.2.2 any person(s) or party(s) while knowing or having reason to know that such thing of value is to be given, offered or promised to an Official in order to:
 - 9.2.2.1 influence any official act or decision, or;
 - 9.2.2.2 induce an Official to do or omit to do any act in violation of his or her lawful duty, or;
 - 9.2.2.3 induce an Official to use his or her influence to affect or influence a decision or act of any government, instrumentality, or international organization, or;

- 9.2.2.4 assist the Parties hereto or any other person in obtaining or retaining business for or with, or in directing business to the Parties or any other person, or;
 - 9.2.2.5 to obtain or secure an unfair or improper advantage for the Parties in any respect.
- 9.3 In connection with this Agreement, no Party shall make a contribution or give, offer, promise or authorize, directly or indirectly, anything of value to any political party, official of a political party or candidate for office on behalf of or associated with the Parties or in connection with the purpose of this Agreement.
- 9.4 In connection with this Agreement, no Party shall engage in any acts of bribery, kickback or other improper inducement, including bribery of a person in the private sector. Without limiting the generality of the foregoing, no Party shall give, offer, promise or authorize, either directly or indirectly, a financial or other advantage to any person to induce a person to perform improperly a relevant function or activity or to reward such improper performance or where the Party knows or believes that the acceptance of the advantage in itself constitutes the improper performance of a relevant function or activity.
- 9.5 The Subcontractor shall not subcontract any part of the Services nor retain or engage a Sub-Subcontractor to carry out sales or marketing obligations in connection with the scope of this Agreement without obtaining Company's prior written consent. Company reserves the right in its sole discretion to reject a request to engage or retain any such Consultant.
- 9.6 The Subcontractor hereby covenants that neither it nor any officer, director, owner, principal shareholder, investor, agent, representative or employee of the Subcontractor, or any family member of such persons, is now or during the term hereof will become an Official, political party official, or candidate for political office. The Subcontractor shall not employ any Official, political party official, or candidate for political office during the term of this Agreement. The Subcontractor further covenants that no Official, political party official, or candidate for political office is deriving any benefit, directly or indirectly, from this Agreement. The Subcontractor agrees to notify Company immediately of any changes to this covenant.
- 9.7 In no case shall Company be obligated to take any action or make any payment to the Subcontractor or any other Sub-Subcontractor that would cause Company to suffer a penalty or contravene applicable laws or regulations, including but not limited to the laws of the territories in which work will be performed and those of the United States.
- 9.8 If the Subcontractor breaches any of the covenants contained in this section, Company shall have the right to immediately terminate this Agreement without penalty or further payment of any sums due and owing or claimed by the Subcontractor hereunder. In such instance, the Subcontractor shall indemnify Company for any penalties, losses and expenses resulting from such breach of the provisions of this section.
- 9.9 In the event that this Subcontract involves any export to a non-U.S. country, to a foreign person within the U.S., or from one non-U.S. country to another, Subcontractor warrants and represents that neither it nor any of its agents, employees, parent companies, subsidiaries, subcontractors, or lower-tier suppliers are identified on any denied party list maintained by the U.S. federal government, including those lists maintained by the Department of Commerce, Office of Foreign Assets Control, Department of State, or General Services Administration (e.g., Bureau of Industry and Security Denied Persons List, Specially Designated Nationals/Blocked Persons Lists, and/or Debarred List or Federal Program Exclusion List).

- 9.10 Company shall have no obligation or responsibility whatsoever to ship, export, or otherwise transport the equipment and/or technology that is the subject of this Subcontract, or any equipment or technology related thereto, outside of the United States. Subcontractor shall be exclusively responsible for the shipment, export, or other transport of all equipment and technology outside of the United States supplied pursuant to this Subcontract.
- 9.11 Subcontractor shall be solely and exclusively responsible to timely satisfy all requirements of all relevant U.S. export laws and regulations related to the export of all equipment and technology to be supplied under this Subcontract, and, where applicable, all foreign laws and regulations related to such export.
- 9.12 Upon request by Company, Subcontractor shall (1) notify Company in writing of the Export Commerce Control Number (ECCN) under the Commerce Control List of the U.S. Export Administration Regulations that applies to each of the goods or technology, or, alternatively, which of the goods or technology is not classified under any ECCN on the Commerce Control List, and (2) provide Company with all information and documentation necessary for and related to the proper classification of each of the goods or technology under the foregoing regulations.

ARTICLE 10 COMPANY RIGHTS AND RESPONSIBILITIES

- 10.1 **Inspection:** Company, through any authorized representatives, shall have the right at all reasonable times to inspect or otherwise evaluate the quality or any other aspect of the Work performed or the safety measures employed in the Work being performed hereunder and the premises where it is being performed. If any inspection or evaluation is made by Company on the premises of Subcontractor or a Sub-Subcontractor, Subcontractor shall provide, and shall require its Sub-Subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of Company representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner that will not unnecessarily delay the Work.
- 10.2 **Audit:** Upon request by Company and/or the Customer, the accounting records and other business and Project records maintained by Subcontractor directly related to the performance of the Work specified herein shall be subject, at all reasonable times, to audit by Company and/or the Customer and their respective authorized representatives for the purpose of verifying Subcontractor's compliance with the terms of this Subcontract and/or the Prime Contract. Company may have such an audit performed at any time within three (3) years following the completion or termination of the Work specified herein, or three (3) years following completion of the Prime Contract where Customer audit rights extend to Subcontractor data, whichever is later.

ARTICLE 11 AVAILABILITY OF LANDS

- 11.1 **Customer-Furnished Lands:** Unless otherwise provided in the Prime Contract, the Customer shall furnish the lands upon which the Work is to be performed, any lands designated for temporary use during construction, any required rights-of-way for access thereto. Unless otherwise provided in the Prime Contract, easements, if required for permanent structures or permanent changes in existing facilities, shall be provided by the Customer. Company reserves the right to allocate the land provided by the Customer for temporary use during construction among the various Project subcontractors.

- 11.2 **Subcontractor-Furnished Lands:** Subcontractor shall be responsible to provide, at its cost, any temporary lands, easements, or access not provided by the Customer and considered necessary by Subcontractor to carry out the Work.

ARTICLE 12 RIGHTS IN DATA; INTELLECTUAL PROPERTY

- 12.1 **Rights in Data:** In addition to the Customer's rights in data, inventions, and computer software and software documentation as set forth in the Prime Contract, Subcontractor agrees that Company shall have an unlimited, irrevocable, fully paid-up, royalty-free right to use, reproduce, display, perform, distribute, and prepare derivative works, and authorize others to do so, in any and all inventions, discoveries, improvements, and patents, as well as any and all data, reports, information, copyrights, and works of authorship that are first conceived, developed, generated, or delivered by Subcontractor in performance of this Subcontract. Subcontractor shall not deliver, and shall not incorporate into any deliverable, any third-party data protected by copyright or similar right.
- 12.2 **Works for Hire:** Drawings, specifications, and other documents, including those in electronic form, prepared by Subcontractor and Subcontractor's Sub-Subcontractors are instruments of service for use with respect to the Work. Subcontractor agrees to disclose and promptly furnish to Company any and all instruments of service created in connection with the Work. Company shall own all right, title, and interest in and to the said instruments of service, including all intellectual property rights therein. Subcontractor expressly acknowledges that the Parties have agreed that all aspects of the instruments of service and all work in process in connection therewith are to be considered "works made for hire" within the meaning of the Copyright Act of 1976, as amended, and that Company is to be the "author" within the meaning of said Act. All such copyrightable instruments of service, as well as all copies in whatever medium fixed or embodied, shall be owned exclusively by Company at its creation, and Subcontractor hereby expressly disclaims any interest in any of them. Unless the Parties otherwise agree in writing in connection with such instruments of service, Company hereby grants to Subcontractor and Subcontractor's Sub-Subcontractors a fully paid-up, non-exclusive license to use, display, copy, and make derivative works of the instruments of service solely for the purpose of providing services to Company under this Subcontract. Upon request by Company, Subcontractor shall provide the instruments of service in media and format reasonably acceptable to Company. Upon request by Company, Subcontractor shall also provide Company with a reproducible set of engineering design calculations that include all such calculations performed by Subcontractor and Subcontractor's Sub-Subcontractors in connection with the services described in this Subcontract or any task order or work authorization. In the event of any unauthorized use, reuse, or alteration of Subcontractor's instruments of service by Company, to the fullest extent permitted by law, Company agrees to defend, indemnify, and hold harmless Subcontractor from and against any claims, suits, demands, liabilities, damages, losses, costs, and expenses, including reasonable attorneys' fees, caused by or resulting from such unauthorized use, reuse, or alteration.

ARTICLE 13 CHANGES AND CLAIMS

- 13.1 **Change Authorizations:** Company may unilaterally, by written Change Order issued by Company's Subcontract Administrator, make changes, revisions, additions, or deletions ("changes") to the Work within the general scope of the Subcontract. If any authorized change causes an increase or decrease in Subcontractor's cost or the time required for the performance of any part of the Work, whether or not changed by such change authorization, and Subcontractor

fully complies with the terms and conditions of this Article 13, Company shall make an equitable adjustment in the Subcontract schedule and/or Subcontract price by Subcontract modification, with additional requirements in Articles 13.6 through 13.8, below, applicable to changes relating to Customer actions. If the Work is reduced by a change, such action shall not be the basis for a claim based on loss of anticipated profits. Subcontractor agrees that, for all claims, the filing of notice and claims within the time prescribed and the timely compliance with procedures outlined by relevant terms and conditions are a prerequisite to payment and to the initiation of any litigation against Company or the Customer, and that the failure to do so shall be a waiver of any legal rights with respect to the subject matter of the claim, unless otherwise agreed to in writing by Company.

- 13.2 **Potential Changes:** Subcontractor shall, upon knowledge of any potential changes (including actions, inactions, and written or oral communications by Company, the Customer, or third parties) that do not conform to the authorized method of directing changes specified in Article 13.1, above, promptly (but in no event more than two [2] business days after the occurrence of such action, inaction, or communication) and prior to proceeding with the Work as changed, notify Company's Subcontract Administrator of such change and await written instruction as to how to proceed.
- 13.3 **Changes in Writing:** Subcontractor shall not proceed with any change, whether directed by Company or the Customer, unless notified to proceed in writing by Company's Subcontract Administrator.
- 13.4 **Changes Mandatory:** Nothing herein shall be construed as relieving Subcontractor of its obligations to perform the Work as changed, including, without limitation, the failure of the Parties to agree upon Subcontractor's entitlement to, or the amount of, any equitable adjustment in the Subcontract schedule or Subcontract Price, or both.
- 13.5 **Claims:** Any claim by Subcontractor for an adjustment to the Subcontract schedule, the Subcontract Price, or both under Article 13.1, above, must be asserted in writing, referencing this Article 13.5 and fully supported by factual information to Company within fourteen (14) days from the date of receipt by Subcontractor of the written change authorization from Company or within such extension of that fourteen (14)-day period as Company, in Company's sole discretion, may grant in writing at Subcontractor's request prior to expiration of said period. Subcontractor waives any claim that fails to meet these timeliness requirements. Payment is not owing to Subcontractor until sufficient supporting documentation is provided and Company has issued a written determination authorizing payment and acceptance of the claim.
- 13.6 **Customer Changes:** If changes are Customer-directed or if the Customer acts or fails to act in a manner specified elsewhere in this Subcontract, equitable adjustments shall be made but only in accordance with Prime Contract terms and conditions applicable to this Subcontract. Subcontractor acknowledges Prime Contract terms and conditions for changes, as enumerated in Appendix B. Customer terms and conditions impose varying requirements for notice by Company to the Customer, written direction from the Customer, and abeyance of Company proceeding prior to Customer direction. Subcontractor shall cooperate with Company and fully comply with these terms and conditions, including certification terms and conditions. Subcontractor shall provide prompt (but in no event more than two [2] business days after start of such circumstances) notice of any circumstances constituting changes directed by the Customer or covered by these referenced clauses, such that the rights of both Parties to equitable adjustments are preserved. For each time period of notice required by Customer terms and conditions, Subcontractor shall respond as specified elsewhere in this Subcontract, but in no instance later than five (5) business days prior to required notice to the Customer. Subcontractor shall not proceed without prior written authorization from Company's Subcontract Administrator in any event. Subcontractor agrees that the filing of

notice and claims within the time prescribed and the timely compliance with procedures outlined by relevant terms and conditions are a prerequisite to the initiation of any litigation against Company or the Customer, and that the failure to do so shall be a waiver of any legal rights with respect to the subject matter of the claim, unless otherwise agreed to in writing by Company.

- 13.7 **Claims Against Customer:** Notice of any claim for an equitable adjustment based on changes directed by the Customer under Article 13.6, above, must be provided not later than fourteen (14) days after the earliest incurrence of costs occasioned by the Customer change. Notice shall be in writing, referencing this Article 13.7 and captioned, "Notice of Claim for Customer Change." Subcontractor shall cooperate in preparing and submitting all information required under the Prime Contract to support such claim, including such Customer requirements as enumerated in Appendix B. Subcontractor agrees and acknowledges that Customer determinations on such claims are binding on Subcontractor unless Company agrees, in its sole discretion, to dispute the claim under Article 18.2 of this Subcontract. Subcontractor shall bear all costs of preparing and supporting the Customer's consideration of the claim, unless otherwise compensated by the Customer under the Customer's claim process. Subcontractor agrees that no compensation regarding any Customer claim is due or owing to Subcontractor until thirty (30) days after the Customer has paid Company for Subcontractor's claims.
- 13.8 **Claims Against Customer for Termination for Convenience:** Notwithstanding any other requirement of this Subcontract, all or part of this Subcontract may be terminated by Company for convenience at the direction of the Customer or in response to the Customer's termination of the Prime Contract for its convenience, and is subject to the terms and conditions of this Article 13. Company shall provide notice of the Customer's termination direction or termination of the Prime Contract within fifteen (15) days of receipt. In such event, Subcontractor shall be entitled to compensation for services performed in accordance with this Subcontract up to the date of termination or demobilization, plus reasonable termination expenses, as determined at the sole discretion of Company in accordance with the Customer terms and conditions as set forth in Appendix B. Subcontractor shall not be entitled to compensation for loss of anticipated profit on services not performed. In such an event, Subcontractor shall cooperate in preparing its portion of the termination claim in accordance with the Article 13. The final termination settlement proposal for Subcontractor's Work shall be submitted not later than six (6) months from the effective date of the Customer's termination notice.

ARTICLE 14 WARRANTY AND GUARANTEE

- 14.1 **Responsibility of Subcontractor, Services:** Subcontractor shall be responsible for the professional quality, technical accuracy, and coordination of all material produced and services furnished by Subcontractor under this Subcontract. Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in the Work or services provided that are discovered within a twelve (12)-month period after final completion of the Work. If such deficiencies are not corrected in a timely manner, Company may cause the same to be corrected, and deduct such corrective-action costs incurred from monies otherwise due to Subcontractor. Subcontractor shall be liable for any such excess costs and shall reimburse Company within thirty (30) days of receipt of invoice. This warranty and corrective action shall be in addition to any warranty or guarantee specified elsewhere in the Subcontract Documents, and shall not limit the application of any other warranty or remedy available at law or in equity.
- 14.2 **Responsibility of Subcontractor, Equipment and Supplies:** Subcontractor warrants that all goods, supplies, and equipment procured or furnished under this Subcontract shall be merchantable

and free from defects in material and workmanship, and shall conform to applicable specifications and drawings. If Subcontractor is responsible for the design of the product or item according to performance specifications established by Company, Subcontractor warrants that all products or items so furnished under the Subcontract shall be free from defect in design and shall be fit and sufficient for the purpose intended by Company. Company's approval of the design furnished by Subcontractor does not relieve Subcontractor of its obligations under this warranty.

- 14.3 **Warranties Run to Company and Customer:** Subcontractor's warranties, together with any services warranties, shall run to Company and the Customer. Subcontractor warrants that any manufacturer or supplier warranty provided with delivered or furnished products or items shall run to Company and Customer.

ARTICLE 15 INSURANCE AND INDEMNIFICATION

- 15.1 **Insurance:** Subcontractor shall purchase and maintain throughout the course of the Work such insurance as will protect Subcontractor, Customer, and Company from claims and damages that may arise out of or result from Subcontractor's operations (whether by itself, any Sub-Subcontractors or suppliers, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable), including (without limitation) (i) claims under workers' compensation, disability benefit, and other similar employee benefit acts; (ii) claims for damages because of bodily injury, occupational sickness or disease, or death of its employees or any other person; (iii) claims for damages sustained by any person other than Subcontractor's employees as a result of the actions of Subcontractor, any Sub-Subcontractors or suppliers, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable; and (iv) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

Without limiting the generality of Article 15.1, above, at a minimum maintain the greater of: i) the insurance requirements of the Prime Contract; or ii) the following types and amounts of insurance.

- 15.1.1 Commercial General Liability (CGL) Insurance, including coverage for premises and operations, independent contractors, personal injury, advertising injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability with limits of not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate, applicable on a per-Project basis for bodily injury and property damage, including loss of use thereof.
- 15.1.2 Business Automobile Liability Insurance with a limit of not less than \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, and borrowed vehicles on site or off site. If vehicle is above a Class 2 classification then \$2,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, and/or borrowed vehicles on site or off site is required. If any hazardous substances are transported coverage must include a MCS-90 endorsement and Motor Carriers Act of 1980 coverage applicable in the jurisdiction where the operations of the insured are performed.
- 15.1.3 Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee.

Coverage shall be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 USC Sections 901–950) and the Jones Act (46 USC Section 30104.) for work on or near navigable waters.

Defense Base Act (DBA) Worker's Compensation— Should Company's Client be the U.S. Federal Government and any of the Subcontractor's Work require the performance of services or delivery of supplies in an area outside the United States, Subcontractor shall comply with the requirements of the Defense Base Act (42 USC 1651 *et seq.*).

- 15.1.4 An Umbrella or Excess Policy may be used to meet the CGL and Business Automobile Liability insurance requirements stated above. An Umbrella or excess policy may also be used to meet limits of required insurance below if the policy explicitly extends to those coverages. Horizontal exhaustion wording will not be accepted and must be removed from any umbrella or excess coverages.
- 15.1.5 Professional Liability or Errors and Omissions Insurance with a minimum limit of \$500,000 per claim and \$500,000 in the aggregate. Professional Liability Insurance shall be maintained for an additional, uninterrupted period of not less than five (5) years after completion of the Work, or for such time period as is required by the Prime Contract, whichever is longer.
- 15.1.6 Subcontractors Pollution Liability Insurance – Should any of the Work involve soil excavation, earth moving or subsurface investigation, Subcontractor shall carry Contractors Pollution Liability Insurance in an amount not less than \$2,000,000 per occurrence/annual aggregate. If removal or remedial action concerning the actual or threatened escape of hazardous substances is performed then Subcontractor shall carry Contractors Pollution Liability Insurance in an amount not less than \$5,000,000 per occurrence/annual aggregate. The policy must provide coverage for sudden, accidental or gradual occurrences arising from the Subcontracted Services performed under this Subcontract. If Completed Operations is limited in the policy, such Completed Operations Coverage shall be for a period of not less than three (3) years.
- 15.1.7 Railroad Protective Liability Insurance – Should any of the Work involve activities within any railroad right-of-way, Subcontractor shall carry Railroad Protective Liability Insurance, as may be required by any railroad in connection with Work across, under, or adjacent to the railroad's tracks or railroad right-of-way, with a minimum coverage limit of \$2,000,000 per occurrence and \$6,000,000 in the aggregate, unless otherwise required by Company's Client.
- 15.2 All insurance, other than Professional Liability, Workers' Compensation and Employer Liability, shall be primary, waive subrogation, and name Rust Constructors, Inc., its Client U.S. Army Corp of Engineers Omaha District and their respective parent company, affiliates, subsidiaries officers, directors and employees (and any other party that Company is required to designate as an additional insured under the Prime Contract) as additional insureds.
- 15.3 Subcontractor shall require its lower-tier Subcontractor, if any, to fully comply with the requirements set forth in this Article.
- 15.4 Prior to commencing the Subcontracted Services and upon any renewal of Subcontractor's insurance policies, Subcontractor shall promptly provide Company with updated certificates of insurance evidencing continued compliance with the foregoing requirements, accompanied by copies of the applicable endorsements. With respect to any coverage carried on a claims-made (and reported) basis, the (i) retroactive date shall be noted on the Certificate of Insurance and shall be prior to or the day of the commencement of Subcontractor's services under this Subcontract and

(ii) evidence of coverage shall be provided for five (5) years beyond expiration of this Subcontract (or an extended discovery period shall be exercised), or such time as may be required by the Prime Contract, whichever is longer. Company's acceptance of an incomplete or improper certificate when requested, or failure to identify a deficiency in coverage, shall not be construed as a waiver of Subcontractor's obligation to maintain, in force and effect, the coverages required by this Article. Certificates of insurance shall reference the applicable Company Project Name and Number and be emailed/mailed to Company's Subcontract Administrator.

- 15.5 With the exception of Professional Liability Insurance, Workers' Compensation, and Employer's Liability, the insurance provided by Subcontractor is primary with respect to the interests of the Client and Company and any other insurance acquired or maintained by them. Applicable Client and Company insurance shall be excess and non-contributory.
- 15.6 Subcontractor shall provide Company with 30 days' advance written notice, 10 days for non-payment of premium, prior to cancellation or material change in policy coverage(s).
- 15.7 The insurance coverage limits required herein are minimum limits and shall not be construed as limits on Subcontractor's liability, limits on Subcontractor's indemnity obligations, or as adequate insurance coverage for Subcontractor's obligations under this Subcontract. Any failure by Subcontractor to comply with the insurance coverage requirements set forth above shall constitute a material breach of this Subcontract and Company may withhold payment to Subcontractor pending cure of such breach.
- 15.8 **Indemnification:** To the fullest extent permitted by law, and in addition to and not in substitution of Subcontractor's obligation to assume Company's indemnification obligations under the Prime Contract to the extent they relate to Subcontractor's obligations under this Subcontract, the following shall apply:
- 15.8.1 **Professional Services:** Subcontractor shall indemnify and hold harmless the Customer and Company, and their respective officials, directors, officers, employees, and agents, from and against any and all claims, suits, demands, damages, liability, losses, costs, expenses (including, but not limited to, reasonable attorney's fees and costs of investigation and defense), fines, or penalties ("Claims") to the extent caused by, arising out of, related to, or resulting from Subcontractor's actual or alleged negligence, recklessness, willful misconduct, or breach of this Subcontract in performing (or failure to perform) and furnishing (or failure to furnish) Subcontractor's professional services under this Subcontract, by Subcontractor, its directors, officers, employees, Sub-Subcontractors, agents, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Further, if Subcontractor's Professional Liability Insurance policy permits Subcontractor to agree by contract to assume the defense of its Customer, Subcontractor further agrees to defend the Customer and Company, and their respective officials, directors, officers, employees, and agents, from and against any and all such Claims.
- 15.8.2 **Other Than Professional Services:** With respect to all acts or omissions of Subcontractor, or any individual or entity directly or indirectly employed by Subcontractor to perform any of the Work, or anyone for whose acts, errors, or omissions Subcontractor may be liable that do not arise out of or result from, or are not incidental to or in connection with, the performance of professional services, Subcontractor shall defend, indemnify, and hold harmless the Customer and Company, and their respective officials, directors, officers, employees, and agents, from and against any and all claims, suits, demands, damages, liability, losses, costs, expenses (including, but not limited to, reasonable attorney's fees

and costs of investigation and defense), fines, or penalties (“Claims”) to the extent caused by, arising out of, related to, or resulting from Subcontractor’s actual or alleged negligence, recklessness, willful misconduct, or breach of this Subcontract by Subcontractor, its directors, officers, employees, Sub-Subcontractors, agents, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

15.8.3 Patent or Copyright Infringement:

15.8.3.1 Subcontractor shall defend any action or proceeding brought against the Customer and/or Company based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright. Company shall give prompt written notice to Subcontractor of any such action or proceeding of which Company has actual knowledge, and will reasonably provide authority, information, and assistance in the defense of same. Subcontractor shall indemnify and hold harmless the Customer and Company from and against any and all damages and costs (including, but not limited to, reasonable attorneys’ fees and costs of investigation and defense) awarded against the Customer and Company in any such action or proceeding. Subcontractor agrees to keep the Customer and Company informed of all developments in the defense of such actions.

15.8.3.2 If Company or the Customer is enjoined from the operation or use of the Project, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding involving a patent or copyright, Subcontractor shall, at its sole expense, take reasonable steps to procure the right to operate or use the Project or applicable part thereof. If Subcontractor cannot so procure such right within a reasonable time, Subcontractor shall promptly, at Subcontractor’s option and at Subcontractor’s expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents or copyrights, or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright, and is consistent with the contract documents.

15.8.3.3 Articles 15.8.3.1 and 15.8.3.2, above, shall not be applicable to any suit, claim, or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Company or the Customer and not offered or recommended by Subcontractor to Company or the Customer, or (ii) arising from alterations to the Project by Company, the Customer, or any other person or entity other than Subcontractor after acceptance of the Project.

15.8.4 **False Claims Act:** Subcontractor shall defend, indemnify, and hold Company and its officers, directors, employees, parent, subsidiaries, and affiliates harmless from and against any and all claims, causes of action, suits of any nature, judgments, liabilities, damages, losses, costs, and expenses (including, but not limited to, reasonable attorneys’ fees and costs of investigation and defense), and any fines or penalties sought or recovered against Company, its officers, directors, employees, parent, subsidiaries, and affiliates, by any governmental entity to the extent caused by, arising out of, related to, or resulting from Subcontractor’s violation or alleged violation of the Federal False Claims Act, 31 USC Sections 3729 through 3733, as amended, or any related statute, regardless of whether or not caused in part by a Party indemnified hereunder.

15.8.5 **Comparative Negligence:** Subcontractor’s total liability to Company and anyone claiming by, through, or under Company for any cost, loss, or damages caused in part by the

negligence of Subcontractor and in part by the negligence of Company or any other negligent entity or individual, shall not exceed the percentage share that Subcontractor's negligence bears to the total negligence of Subcontractor, Company, and all other negligent entities and individuals.

15.8.6 **No Limit of Liability:** Subcontractor's indemnification obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any individual or entity directly or indirectly employed by Subcontractor to perform any of the Work or anyone for whose acts Subcontractor may be liable, under any insurance policy, or any workers' compensation acts, disability benefit acts, or other employee benefit acts.

15.8.7 No part of this Article 15.8 shall be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist to any indemnitee.

ARTICLE 16 CONFIDENTIALITY

16.1 **Company Confidential or Proprietary Information:** For purposes of this Subcontract and except as provided elsewhere in this Subcontract, "Company Confidential or Proprietary Information" means: (i) all information disclosed by one Party to the other that is marked or otherwise clearly identified as confidential or proprietary and (ii) all information disclosed by one Party to the other, whether or not so marked or designated, that the receiving Party knows or reasonably should know, based on the circumstances of disclosure, to be confidential or proprietary information, including, without limitation, any and all information or proprietary materials (in every form and media) that have been or are hereafter disclosed and that are not generally known in the relevant trade or industry of Company, Subcontractor, Customer, or their respective affiliates or third parties with which Company, Subcontractor, or Customer conducts or may conduct business. Confidential or Proprietary Information includes (without limitation) (a) all trade secrets and intellectual property; (b) existing or contemplated products, services, designs, technology, processes, technical data, techniques, methodologies, and concepts and any information related thereto; (c) information relating to business plans, forecasts, sales or marketing methods, business and product strategies, pricing, and Customer lists or requirements; (d) algorithms, software source code, object code, and compiled code; and (e) market research data, whether containing historic, current, or future-related information, and whether containing proprietary data of the disclosing Party or third-party commercial data.

16.2 **Exclusions from Company Confidential or Proprietary Information:** Notwithstanding the provisions of Article 16.1, above, Company Confidential or Proprietary Information shall not include information that the receiving Party can demonstrate the following: (1) was publicly available through no fault of the receiving Party at the time it was communicated by the other Party to the receiving Party, (2) becomes publicly available through no fault of the receiving Party subsequent to the time it was communicated by the other Party to the receiving Party, (3) was in the receiving Party's possession free of any obligation of confidence at the time it was communicated by the other Party to the receiving Party, (4) was rightfully communicated by a third party to the receiving Party free of any obligation of confidence subsequent to the time it was communicated by the other Party to the receiving Party, or (5) was developed by employees or agents of the receiving Party independently of and without reference to or use of any Company Confidential or Proprietary Information communicated by the other Party to the receiving Party. The terms of this Subcontract shall be deemed Company Confidential or Proprietary Information, provided that each Party may disclose such terms to its attorneys, accountants, and other professional advisors, or to potential investors or other third parties conducting due diligence in

connection with a potential change of control of such Party, provided further that each of the foregoing must be under a duty of confidentiality.

- 16.3 **Third-Party Confidential or Proprietary Information:** For the purposes of this Subcontract, “Third-Party Confidential or Proprietary Information” means all information, in whatever form transmitted, relating to the Customer or another party whose information Company has in its possession under obligations of confidentiality that (i) is disclosed by Company to Subcontractor or (ii) developed by Subcontractor at Company’s expense. Subcontractor’s obligations under this Subcontract as it relates to Third-Party Confidential or Proprietary Information shall survive indefinitely beyond the expiration or termination of this Subcontract or such shorter period as may be specified by the Customer or other third party.
- 16.4 **Deliverables:** Subcontractor hereby agrees that all information provided by or through Company or developed by Subcontractor under this Subcontract shall be considered Company Confidential or Proprietary Information or Third-Party Confidential or Proprietary Information, as the case may be.
- 16.5 **Possession and Use of Company Confidential or Proprietary Information:**
- 16.5.1 Each Party shall hold the other Party’s Company Confidential or Proprietary Information and all Third-Party Confidential or Proprietary Information in strict confidence and shall treat it with the same degree of care that it uses to protect its own confidential or proprietary information (but in no event less than what is reasonably required to protect it from disclosure). Neither Party shall use the other Party’s Company Confidential or Proprietary Information or any Third-Party Confidential or Proprietary Information in any way, and shall not disclose it to any third party, except as contemplated by this Subcontract, provided that the receiving Party shall only use such information as required to fulfill its obligations under this Subcontract.
- 16.5.2 Neither Company Confidential nor Proprietary Information of the other Party nor Third-Party Confidential or Proprietary Information shall be reproduced in any form except as required to accomplish the intent of this Subcontract. Except as otherwise provided expressly by this Subcontract, any reproduction of any the disclosing Party’s Company Confidential or Proprietary Information or any Third-Party Confidential or Proprietary Information by the receiving Party shall remain the property of the disclosing Party or the disclosing third party, as the case may be, and shall contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the third-party owner of such information. Each Party agrees that nothing contained in this Subcontract shall be construed as granting any property rights, by license, or otherwise, to any Company Confidential or Proprietary Information of the disclosing Party or any Third-Party Confidential or Proprietary Information disclosed pursuant to this Subcontract, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Company Confidential or Proprietary Information or Third-Party Confidential or Proprietary Information. The receiving Party shall not make, have made, use, or sell for any purpose any product or other item using, incorporating, or derived from any Company Confidential or Proprietary Information of the disclosing Party or any Third-Party Confidential or Proprietary Information. Neither Party shall communicate any information to the other Party in violation of the proprietary rights of any third party. Each Party agrees that it will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Company Confidential or Proprietary Information of the

disclosing Party or any Third-Party Confidential or Proprietary Information without the prior written consent of the third-party owner of such information.

- 16.5.3 Notwithstanding anything contained herein to the contrary, in the event that a Party is unintentionally exposed to any Company Confidential or Proprietary Information of the other Party or any Third-Party Confidential or Proprietary Information, that Party agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report, or transfer such Company Confidential or Proprietary Information or Third-Party Confidential or Proprietary Information to any person or entity or use such Company Confidential or Proprietary Information or Third-Party Confidential or Proprietary Information for any purpose whatsoever.
- 16.5.4 The receiving Party shall immediately notify the disclosing Party upon the receiving Party's discovery of any loss or unauthorized disclosure by the receiving Party of any of the disclosing Party's Company Confidential or Proprietary Information or any Third-Party Confidential or Proprietary Information.
- 16.5.5 Upon termination or expiration of this Subcontract, or upon written request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party all documents and other tangible materials representing the disclosing Party's Company Confidential or Proprietary Information and all copies thereof. In addition, upon termination or expiration of this Subcontract, or upon written request of Company or the third-party owner of such information, Subcontractor shall promptly return to Company all documents and other tangible materials representing Third-Party Confidential or Proprietary Information and all copies thereof.
- 16.6 **Compelled Disclosure:** If the receiving Party or any of its officers, employees, or agents is legally compelled, whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand, or similar process, or law or regulation to disclose any of the disclosing Party's Company Confidential or Proprietary Information or any Third-Party Confidential or Proprietary Information, the receiving Party shall promptly notify the disclosing Party of such requirement so that the disclosing Party or third-party owner of such information may seek a protective order or other appropriate remedy or waive compliance with the provisions hereof, in whole or in part, or both. Without limiting the foregoing, such compelled disclosure includes, but is not limited to, any disclosure (a) required for compliance with professional standards of conduct for preservation of public safety, health, and welfare (so long as the receiving Party has given the disclosing Party prior notice of the potential hazard and the disclosing Party has had a reasonable opportunity to correct the hazard prior to disclosure); (b) made pursuant to the requirement of a governmental agency, which disclosure cannot be made in confidence; (c) made pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena; or (d) made in connection with the receiving Party's defense against claims arising from performance of services under this Subcontract. The receiving Party shall use reasonable efforts, at the disclosing Party's expense, to obtain or assist the disclosing Party in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, the receiving Party may disclose, without liability hereunder, that portion (and only that portion) of the Company Confidential or Proprietary Information that the receiving Party has been advised by written opinion of legal counsel that it is legally compelled to disclose, provided that the receiving Party agrees to use reasonable efforts to obtain assurance that confidential treatment will be accorded such Company Confidential or Proprietary Information by the person or persons to whom it is to be disclosed. The receiving Party acknowledges and agrees, however, that any such information that is disclosed pursuant to applicable law or court order continues to be subject to this Subcontract for all other purposes, and

disclosure to the appropriate entities provided by law or court order does not constitute public disclosure of such information.

- 16.7 **Remedies:** The Parties acknowledge and agree that all Confidential Information is considered to be proprietary and of competitive value, and, in many instances, trade secrets. The Receiving Party agrees that because of the unique nature of the Company Confidential or Proprietary Information, any breach of this Subcontract would cause the disclosing Party irreparable harm, and money damages and other remedies available at law in the event of a breach would not be adequate to compensate the disclosing Party for any such breach. Accordingly, the disclosing Party shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including, without limitation, injunctive relief and specific performance, as a remedy for any such breach. Such relief shall be in addition to, and not in lieu of, all other remedies available at law or in equity to the disclosing Party.

ARTICLE 17 SUSPENSION AND TERMINATION

- 17.1 **Suspension of Work:** Subcontractor shall, immediately upon receipt of written notice from Company's Subcontract Administrator, suspend, delay, or interrupt all or a part of the performance of the Work to the extent directed by Company. In such event, Subcontractor shall resume work upon the suspended activities only upon receipt of written notice from Company's Subcontract Administrator. Where appropriate, an equitable adjustment to the Subcontract schedule and/or Subcontract Price shall be established, as specified in Article 13. Except as directed in writing by Company, Subcontractor shall not suspend its performance or otherwise fail to maintain the timely progress of the Work. Subcontractor shall take such additional actions as may be directed by Company to protect the Work during the period of such suspension.

- 17.2 Termination:

17.2.1 **Termination for Convenience:** All or part of this Subcontract may be terminated by Company for its convenience by written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall immediately discontinue performance of the Work on the date and to the extent specified in writing by Company. In such event, Subcontractor shall be entitled to compensation for services performed in accordance with the Subcontract up to the date of termination, plus reasonable termination expenses, as determined at the discretion of Company. Subcontractor shall not be entitled to compensation for loss on anticipated profit or other compensation on services not performed. In addition, Subcontractor shall, upon Company's request, promptly deliver all Data related to the Work to Company.

17.2.2 **Termination for Default:**

17.2.2.1 Company may, by written notice to Subcontractor and the Surety, if any, terminate the whole or any part of the Subcontract for default in the event that Subcontractor fails to perform any of the terms and conditions of this Subcontract; fails to make progress so as to endanger performance of the Subcontract in accordance with its terms; or, in the opinion of Company, becomes financially or legally incapable of completing the Work and does not correct such to Company's reasonable satisfaction within a period of twenty-four (24) hours after receipt of notice from Company specifying such failure. Subcontractor shall cease that portion of the Work so terminated by Company as of the date set forth in the notice of termination. Subcontractor shall continue to

perform such portion of the Work, if any, not terminated by Company. In addition, Subcontractor shall, upon Company's request, promptly deliver all Data related to the Work to Company. Subcontractor shall remain liable for the additional costs reasonably incurred by Company to remedy any defective or deficient Work. The reimbursements due to Company as set forth above may be deducted from any sums due to Subcontractor, and Subcontractor shall promptly pay any remaining costs reasonably incurred by Company.

- 17.2.2.2 In the event of a termination for default, Subcontractor shall be entitled to payment for Work completed in accordance with the Subcontract, but not until completion of the Work and the assessment of all costs associated with its completion. If deemed necessary by Company, Company may acquire similar services by subcontract, complete the Work itself, or satisfy the task requirement in any other manner deemed appropriate. Company may take possession of all equipment, materials, and supplies at the Work site or in storage for the Work, together with such construction equipment, scaffolding, forms, and other construction aids on site required for the prosecution of the Work. Subcontractor shall be liable for all costs in excess of the Subcontract Price, including excess re-procurement costs, incurred by Company and/or Customer in completing the Work that was to have been done by Subcontractor under this Subcontract, as well as any expenses and damages associated with the default.
- 17.2.2.3 If, after notice of termination for default, it is determined for any reason that Subcontractor was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience of Company, as set forth above.
- 17.2.2.4 Regardless of the cause of termination, Subcontractor shall make an orderly turnover of the terminated Work to Company and provide legible copies of all completed or partially completed Work products and instruments of service, including, but not limited to, laboratory, field, or other notes, log book pages, inspection reports, technical data, computations, and designs.
- 17.2.2.5 The rights and remedies of Company provided in this Article are not exclusive and are in addition to any other rights and remedies provided by law or in equity or under this Subcontract.

ARTICLE 18 DISPUTE AVOIDANCE AND RESOLUTION

- 18.1 Company and Subcontractor are fully committed to working with each other throughout the Project, and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Company and Subcontractor each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work. During the pendency of any controversy or claim hereunder, Subcontractor shall proceed diligently with the performance of the Subcontract and in accordance with the direction of Company.

18.2 Disputes Involving the Customer:

- 18.2.1 The Prime Contract includes a mandatory disputes clause (the "Disputes Clause") that governs the resolution of questions of law or fact relating to the Prime Contract. All of

Subcontractor's claims, controversies, or disputes concerning matters that pertain to disputes cognizable under the Disputes Clause of the Prime Contract shall be governed by the provisions of this Article 18.2, and Subcontractor shall provide Company with a timely and detailed written notice of any such claims or controversies. Any final decision of the contracting officer under the Prime Contract relating to this Subcontract or Subcontractor's performance hereunder shall be conclusive and binding upon Subcontractor unless appealed and reversed as provided below. Company shall notify Subcontractor of any such final decision within ten (10) business days of Company's receipt thereof.

- 18.2.2 In the event Company elects to appeal any such final decision, pursuant to the Disputes Clause of the Prime Contract, Subcontractor shall provide Company with reasonable assistance in the prosecution of such appeal, including, but not limited to, reasonable access to Subcontractor's personnel and non-privileged documents. Subcontractor further agrees to reimburse Company for any and all reasonable costs associated with an appeal arising out of or relating to this Subcontract taken on behalf of Subcontractor. However, if Subcontractor notifies Company in writing that such an appeal should not be taken on Subcontractor's behalf, Company shall have the right to continue such an appeal on behalf of Company and Subcontractor, with Subcontractor providing reasonable assistance in the prosecution of such an appeal as described herein.
- 18.2.3 In the event Company elects not to appeal any such final decision pursuant to the Disputes Clause of the Prime Contract, Company shall so notify Subcontractor in writing within fourteen (14) days of Company's receipt of such final decision. If, within ten (10) days of receipt of Company's notice of a decision not to appeal any such final decision, Subcontractor requests Company, in writing, to appeal the contracting officer's final decision, Company shall do so at the sole expense of Subcontractor, provided such an appeal would not be in violation of any civil or criminal statute. If Company appeals any such final decision, whether at its election or at Subcontractor's request, a final judgment in any such appeal, if binding upon Company under the Prime Contract, shall in turn be binding upon Subcontractor and Company under this Subcontract. Further, Subcontractor shall be solely responsible for providing any and all certifications required, including, but not limited to, any certifications required by the Contract Disputes Act of 1978, 41 USC Sections 601–613, as amended, to the extent applicable, and any and all information requested by Company to support any certifications required for appeals pursuant to the Disputes Clause of the Prime Contract.
- 18.2.4 As used herein, the term “appeal” shall include any and all proceedings taken by Company before a (i) government agency, (ii) board of contract appeals, or (iii) federal or state court, subject to the jurisdiction and applicability of such bodies. Subcontractor shall be conclusively bound by any decision of any such dispute resolution forum or tribunal designated in the Prime Contract.
- 18.2.5 If the Customer contends that the Prime Contract has been breached, or otherwise asserts a claim or set-off against Company, the Party determined to be responsible for the breach either by settlement or by the trier of fact shall be responsible for all costs occasioned by the breach, including counsel and litigation costs. If the trier of fact fails to determine the relative degrees of fault of Company and Subcontractor in connection with any claim by the Customer, then Company and Subcontractor agree that the allocation of fault shall be determined pursuant to Article 18.3 of this Subcontract.
- 18.2.6 For any claims to be submitted under this Article 18.2 in excess of \$100,000, Subcontractor shall certify to Company as to its portion of the claim that (a) the claim is made in good faith, (b) the supporting data are accurate to the best of Subcontractor's knowledge and

belief, and (c) the amount requested accurately reflects the Subcontract adjustment for which Subcontractor believes the Customer is liable. If any claim of Subcontractor is determined to be based on fraud or misrepresentation, Subcontractor agrees to defend, indemnify, and hold Company, its officers, directors, employees, and affiliates, harmless from any and all liability, loss, cost, or expense resulting therefrom.

18.3 Disputes Not Involving the Customer:

- 18.3.1 In the event that a question, claim, or dispute between the Parties is not cognizable under Article 18.2, such question, claim, or dispute shall be settled by mutual agreement between the Parties. Company and Subcontractor shall attempt in good faith to resolve through negotiation any claim, dispute, controversy, or counterclaim arising out of or relating to this Subcontract (hereafter collectively referred to as “Dispute”). Either Party may initiate Dispute negotiations by providing written notice in letter form to the other Party, setting forth the nature of the Dispute and the relief requested. The recipient of such notice shall respond within five (5) business days with a written statement of its position on, and recommended solution to, the Dispute. If the Dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority shall meet at a mutually agreeable time and place within ten (10) business days of the date of the initial notice (unless otherwise mutually agreed between the Parties) to exchange relevant information and perspectives, and to attempt to resolve the Dispute.
- 18.3.2 If the Dispute is not resolved by these negotiations, the Parties agree to submit any such unresolved Dispute to mediation, unless the Parties mutually agree otherwise. Either Party may commence mediation by providing the other Party a written request for mediation, setting forth the nature of the Dispute and the relief requested. The Parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. In the event the Parties are unable to select a mediator mutually acceptable to them, they shall jointly petition the chief judge for the City of where the work is performed to make such selection. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, or attorneys, and by the mediator are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first, provided however, that either Party may commence a civil action or file a statutory lien prior to such mediation should the statute of limitations on any claims or liens arising out of the dispute run prior to the mediation date, unless the other Party enters into and executes a valid and enforceable tolling agreement prior to the date the statute of limitations runs. Mediation may continue after the commencement of a civil action if the Parties so agree in writing. The provisions of this Article 18.3 may be enforced by a court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including reasonable attorneys’ fees and costs of investigation, to be paid by the Party against whom enforcement is ordered.

- 18.3.3 Any claims, disputes, or other controversies between the parties arising out of or relating to this Subcontract, or the breach thereof, that have not been resolved in accordance with the procedures set forth in this Article 18.3 shall be subject to litigation in any court of competent jurisdiction. In the event of any litigation under this Article 18.3, the courts of the state of where the work is performed shall have sole and exclusive jurisdiction. Except as otherwise provided by statute not subject to waiver, due to the specialized nature of construction litigation, each Party hereby waives its right to trial by jury. Subcontractor irrevocably consents to the personal jurisdiction of said courts and waives any and all defenses of forum non conveniens, improper venue, or lack of personal jurisdiction.

ARTICLE 19 HEALTH AND SAFETY

- 19.1 Subcontractor shall take all necessary precautions for the health and safety of its employees and other persons and the protection of the environment under Subcontractor's responsibility or control. Subcontractor shall, at a minimum, comply with the applicable federal, state, provincial, and local safety and occupational health laws and regulations, and environmental laws and regulations including but not limited to the Occupational Safety and Health Administration (OSHA) 29 CFR 1910 Occupational Safety and Health Standards when performing Subcontracted Services in the US.
- 19.2 As the prime consultant, Company will provide a single copy of Company's and/or Client's site-specific Safety, Health and Environment (SH&E) Plan to Subcontractor prior to the commencement of any Subcontracted Services for which Company, in its sole discretion, determines an SH&E Plan is required. Such SH&E Plan will define key minimum SH&E requirements as they relate to the Project. Subcontractor shall comply with all requirements established by such plan related to the Subcontracted Services. Subcontractor shall coordinate its actions with those of the Client, Company and others, as applicable, but Subcontractor shall remain responsible for independently evaluating the risks specifically related to the Subcontracted Services and take such additional safeguards as appropriate.
- 19.3 If the Subcontracted Services require access to the project site and Subcontractor's scope of work has the potential to involve exposure to safety, health, or environmental hazards, then Subcontractor shall develop and implement a subcontractor site-specific SH&E Plan acceptable to Company, assign a "competent person" (as defined by OSHA) to implement and enforce Subcontractor's SH&E plan and provide any appropriate personal protective equipment.
- 19.3.1 Company retains the right to review the Subcontractor's proposed competent person(s) and accept or deny based on acceptable knowledge, skills, and ability as it relates to the Subcontracted Services. Unless otherwise agreed by the Parties in the applicable Purchase Order, the Subcontractor's designated competent person is required to be full-time on site with no other duties other than SH&E if the Subcontractor workforce exceeds twenty-five (25) persons.
- 19.3.2 Company retains the right to review Subcontractor's SH&E plan in order to monitor Subcontractor's compliance, but such review is solely for the benefit of Company and shall not relieve Subcontractor of its representations and obligations related to the Subcontracted Services. SH&E plans reviewed by Company and/or the Client that do not adequately address the tasks or hazards to be performed by the Subcontractor will be returned for resubmission at Subcontractor's expense. No time extension or additional cost will be granted for resubmission and the Subcontractor will not be allowed to mobilize to the project site until an acceptable safety, health and environment plan is submitted.

19.3.3 If Subcontractor is required to develop an SH&E Plan in accordance with Article 19.3, the Subcontractor's SH&E plan shall meet all applicable regulatory requirements and be as stringent as, or more protective than, the requirements set forth in Company's and the Client's SH&E Plans.

19.3.4 If Subcontractor is required to develop an SH&E Plan in accordance with Article 19.3, Subcontractor's SH&E plan must address, at the minimum, the following areas:

- Applicable SH&E related laws, regulations, Client's and Company's requirements
- Short Service Employee (SSE) Program
- Injury Management & Return to Work Program (including posted occupational health clinic)
- Emergency Action Plan (including posted route to the hospital and practice drill requirements)
- Fit for Duty (including a drug and alcohol testing program)
- Training requirements – Minimum employee/supervisor OSHA 10/30 hazard recognition training and for hazardous material and waste sites 29 CFR 1910.120 requirements or equivalent
- Formal Subcontractor's site safety orientation
- Equipment inspection checklists and 3rd party certifications
- Personal protection equipment (PPE) requirements (including hardhat, reflective safety vest, safety glasses, safety shoes, long pants and sleeved shirts, gloves and ear plugs, personal fall arrest system/fall protection harness for all elevation changes greater than six feet)
- Site restrictions (including at the minimum no cell phones, portable media devices, radios, or other devices that limit hearing and attention shall be used while working on site unless in designated area)
- Pre-field Job Safety Analyses, daily Task Hazard Assessment & Change Management
- Stop Work Authority - Red Card
- Required SH&E Audits and Inspections
- Driver Safety Program
- Project Security Plan
- Project Environmental & Sustainability Plan
- Confined Space Entry Plan
- Fall Protection Plan for working at height greater than 1 meter
- Rigging inspection program
- Lock Out Tag Out
- Lift Plans for every lift
- Disciplinary Action Plan

19.4 Before Subcontractor's personnel are allowed on the job site, Subcontractor must furnish proper documentation to the RUST Project Manager of any required OSHA or regulatory required training, drug and alcohol testing, medical surveillance and respirator fit-testing when applicable for all Subcontractor's personnel on the job site and any applicable equipment certifications, inspection documentation, written authorizations, permits, or other SH&E-related documentation required to perform the fieldwork in a lawful and safe manner. Any costs or repercussions as a result of Subcontractor not obtaining required permits or waivers is solely the responsibility of Subcontractor. Subcontractor is required to attend Client's and Company's site safety orientations,

pre-construction safety meetings, and participate in up to four (4) hours per Subcontractor employee of Company's behavior-based safety training and/or training on Company's and/or Client's SH&E processes and procedures applicable to the Subcontracted Services. Subcontractor may be required to provide additional training prior to field mobilization if required by Company, the Client or applicable laws and regulations.

- 19.5 If Subcontractor is required to develop an SH&E Plan in accordance with Article 19.3, Subcontractor must attend and participate in joint daily SH&E tailgate meetings prior to any fieldwork; must conduct a task hazard assessment of its daily activities, and must stop work and reassess if a changed condition occurs in the field.
- 19.6 If, for any reason, Subcontractor's work is stopped by the Client or Company for unsafe conditions or failure to adhere to the SH&E requirements, any associated time delays or costs shall be the Subcontractor's responsibility. Corrective action of unsafe conditions or behaviors must be developed to the satisfaction of the Client and Company and is the sole responsibility of Subcontractor.
- 19.7 If Subcontractor is required to develop an SH&E Plan in accordance with Article 19.3, Subcontractor must maintain on the project site a copy of the Subcontractor's SH&E Plan, signed by all employees on the project site, and must maintain Safety Data Sheets (SDS) or equivalent for all hazardous materials being used on the project site as required.

Each Subcontractor shall participate in the use of the AECOM LifeGuard safety observation system. Access to this system shall be provided to all designated Subcontractor's project managers, who will also be responsible to close all safety observations under their areas of responsibility. Observations will be addressed in a timely manner and in association with the determined risk. There will be no cost to the Subcontractor for using this safety observation system and training will be provided as needed or requested.

- 19.8 In addition to any Client's and regulatory reporting requirements, Subcontractor shall immediately report to Company any (i) death, injury, illness or near miss event that could reasonably have caused death, injury or illness to persons or (ii) any known change in the physical conditions of the project site that is likely to increase the risk of death, injury or illness to persons, ("Conditions"). Subcontractor shall also report immediately to Company any incident resulting in property damage, impact to the public or environment, security related incident, first aid, recordable or lost time incident, or incident that has to be reported to regulatory agencies or garners media attention. Subcontractor shall be solely responsible for identifying and implementing immediate actions needed to correct such Conditions. Subcontractor must conduct an investigation of all accidents and incidents related to Subcontractor's activities and provide a written initial investigation report to Company by the close of business on the day of the incident regardless of the severity of the incident. Submission to Company of a final written investigation report will be required of the Subcontractor at a mutually agreed upon time.

Each Subcontractor shall provide Company with a monthly SH&E report with, at the minimum, monthly man hours worked on the project site and associated incident rates (e.g. EMR, DART, TRIR, LWCR, Severity Rate, Safe Miles Driven); SH&E training conducted; incidents and associated investigation reports; lessons learned and corrective actions taken; environmental pollution prevention and sustainability numbers; and SH&E audits, observations and inspections conducted. Subcontractor shall be required to report in Client and/or Company-defined format and reporting system.

- 19.9 Subcontractor's employees found to be violating elements of the SH&E plan, regulations, rules and policies are subject to immediate and permanent removal from the project site. No Subcontractor employee shall possess, use, or be under the influence of drugs or alcohol while performing Subcontracted Services. Discrimination and harassment of any kind are prohibited in the workplace including sexual harassment by any Subcontractor's employee or by Subcontractor's third parties such as vendors or visitors. Discrimination or harassment may include unwelcome or unsolicited speech or conduct based upon race, sex, pregnancy, age, ancestry, military or veteran status, color, religion, religious creed, disability, marital status, medical condition, genetic information, national origin, gender, gender identity, gender expression, sexual orientation or any other characteristic protected by federal, state, or local law. Weapons of any kind, whether or not permitted by law, are not allowed on the project site. Any Subcontractor's employee found with weapons must be immediately removed from the project site.

ARTICLE 20 MISCELLANEOUS TERMS AND CONDITIONS

- 20.1 **Assignment:** Subcontractor shall not transfer, assign, or hypothecate any rights, obligations, or interest in this Subcontract without the prior written consent of Company. Any attempted transfer, assignment, or hypothecation without such prior written consent shall be void and confer no rights upon any third person and shall constitute a default hereunder. In the event this Subcontract is transferred, assigned, or hypothecated with the prior written consent of Company, Subcontractor shall be and remain responsible to Company for the proper performance of the Work.
- 20.2 **Third Party Liability:** Except as specifically stated elsewhere in this Subcontract, this Subcontract does not create any rights or benefits to parties other than Company and Subcontractor.
- 20.3 Rights and Remedies:
- 20.3.1 No failures of or delay by Company in the exercise of any right under this Subcontract shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other such right. The waiver by Company of any breach of any requirement of this Subcontract shall not be deemed to be a waiver of any subsequent breach or of any other requirement of this Subcontract.
- 20.3.2 Neither Company's nor the Customer's review of, approval of, nor payment for any of the Work or services required under this Subcontract shall be construed to have operated as a waiver of any rights under this Subcontract, or of any cause of action arising out of the performance of this Subcontract. Subcontractor shall be and remain liable to Company and the Customer for damages caused by Subcontractor's failure to perform or negligent performance of any of the Work or services furnished under this Subcontract.
- 20.3.3 The rights and remedies of Company provided for under this Subcontract are in addition to any other rights and remedies provided by law or in equity.
- 20.3.4 The Parties agree that they are aware that they have the right to be advised by legal counsel with respect to the negotiation of terms and conditions of this Subcontract, and the decision of whether or not to seek advice of legal counsel is a decision that is the sole responsibility of each Party. Neither Party shall be deemed to be the drafter or author of this Subcontract. In the event that this Subcontract is subject to interpretation or construction by a court of law or panel of arbitration or mediation, such court or panel shall not construe this Subcontract or any portion hereof against either Party as the drafter of this Subcontract.

- 20.4 **Governing Law:** Irrespective of the place of performance, this Subcontract shall be construed and interpreted according to federal statutes, federal regulations, and federal common law concerning federal government contracts as enunciated and applied by federal courts, boards of contract appeals, and quasi-judicial agencies of the federal government (hereafter collectively referred to as “Federal Contract Law”). To the extent that Federal Contract Law is not dispositive, and state law becomes applicable, the law of the State of California shall apply, without regard to any choice of law principles that may otherwise have permitted the application of the laws of any other jurisdiction.
- 20.5 **Non-Waiver of Defaults:** Any failure by either Party at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Subcontract, or to terminate this Subcontract under Article 17, shall not affect or impair the right of that Party at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.
- 20.6 **Headings:** The headings in this Subcontract are for convenience and reference purposes only and shall not constitute a part of the Subcontract.
- 20.7 **Integration, Severability, and Survival**
- 20.7.1 This Subcontract comprises the final and complete agreement between Subcontractor and Company. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Subcontract. Unless stated otherwise in this Subcontract, modifications to this Subcontract shall not be binding unless made in writing and signed by both Subcontractor and Company. In the event that any term or provision of this Subcontract shall be held to be invalid, void, or unenforceable, then the remainder of this Subcontract shall not be affected, impaired, or invalidated, and each such term and provision of this Subcontract shall be valid and enforceable to the fullest extent permitted by law, if the essential terms and conditions of this Subcontract for each Party remain valid, binding, and enforceable.
- 20.7.2 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Subcontract Documents, as well as all continuing obligations indicated in the Subcontract Documents, including those related to assignment, dispute resolution, indemnification, ownership, and use of documents, or otherwise allocating responsibility or liability between the Parties, shall survive final payment, completion, and acceptance of the Work or termination of this Subcontract for any reason, and shall remain enforceable between the Parties.
- 20.8 **Successors, Assigns, and Beneficiaries**
- 20.8.1 Company and Subcontractor each are hereby bound, and the partners, successors, executors, administrators, and legal representatives of Subcontractor and Company (and to the extent permitted by Article 20.1, the assigns of Subcontractor) are hereby bound to the other Party to this Subcontract and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements, and obligations of this Subcontract.
- 20.8.2 Subcontractor may not assign, sublet, or transfer any rights or obligations under or interest in (including, but without limitation, monies that are due or may become due, or claims for breach of contract or warranty, express or implied, or for negligence) this Subcontract without the written consent of Company, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law or the Prime Contract. Unless

specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge Subcontractor from any duty or responsibility under this Subcontract.

20.8.3 Unless expressly provided otherwise in this Subcontract:

20.8.3.1 Nothing in this Subcontract shall be construed to create, impose, or give rise to any duty owed by Company or Subcontractor to any third party, or to any surety for or employee of any of them.

20.8.3.2 All duties and responsibilities undertaken pursuant to this Subcontract shall be for the sole and exclusive benefit of Company and Subcontractor and not for the benefit of any other party (save and except Subcontractor's indemnity obligations under Article 15.8 of this Subcontract).

20.9 **Counterparts:** This Subcontract may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument. In making proof of this Subcontract, it shall not be necessary to produce or account for more than one counterpart hereof signed by each of the Parties hereto. This Subcontract may be executed and delivered by facsimile (or other electronic transmission of a manually executed counterpart) with the same force and effect as if it were a manually executed and delivered counterpart. Any Party delivering an executed counterpart of this Subcontract by facsimile (or other electronic transmission of a manually executed counterpart) shall also deliver an original executed counterpart of this Subcontract to the other Party, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, or binding effect of this Subcontract as to such Party or any other Party.

ARTICLE 21 MANDATORY FEDERAL ACQUISITION REGULATION (FAR) FLOW-DOWN PROVISIONS/CLAUSES

21.1 Certification and Disclosure Regarding Limitation on Payments to Influence Certain Federal Transactions (FAR 52.203-11 and FAR 52.203-12)

By signing this subcontract, Subcontractor hereby certifies to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the award of this Subcontract. If Subcontractor, under the guidelines of the Lobbying Disclosure Act of 1995, has made a lobbying contact with respect to this subcontract, the Subcontractor hereby completes and submits with this offer OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the names of the registrants.

APPENDIX A – SPECIAL PROVISIONS (SUBCONTRACT) (JAN 2017)

Quality Assurance Program

Subcontractor represents that it has the expertise, experience, personnel and resources to perform the desired Services, and that all personnel engaged in the Services shall be fully qualified and authorized or permitted under applicable law or regulations to perform such Services. None of the Services covered by this Agreement shall be subcontracted without the prior written approval of AECOM.

Subcontractor shall perform those Services set forth and in the manner detailed in this Statement of Work.

- **Subcontractor Quality Assurance Plan**

Subcontractor shall perform the Services in accordance with the procedures, processes and formats established by Rust Constructors, Inc. so that the Subcontractor's work becomes an integral component of the overall delivery of services under the Prime Contract and complies with the Rust Constructors, Inc. project plan quality requirements. Rust Constructors, Inc. shall monitor Subcontractor's compliance with this provision through surveillance or review of Subcontractor's work and deliverables, and Subcontractor shall promptly make any corrections or other adjustments needed as a result of such reviews.

Warranties

Subcontractor will use analytical methodologies which are in substantial conformity with U.S. Environmental Protection agency (EPA), state agency, American Society for Testing and Materials (ASTM), Association of Official Analytical Chemists (AOAC), Standard Methods for the Examination of Water and Wastewater, or other recognized methodologies, where applicable. With Company's prior approval, Subcontractor may deviate from these methodologies if necessary or appropriate due to the nature or composition of the sample or otherwise based on the reasonable judgment of Subcontractor, which deviations, if any, will be made on a basis consistent with recognized standards of the industry and/or Company's Quality Assurance Program Plan and referenced Standard Operating Procedures, or any Project C00 Plan agreed to at the time of performance of the Work. Where any deviations are deemed necessary, Subcontractor shall first obtain Company's prior written approval for such deviation.

Subcontractor will initiate preparation and/or analysis of samples within holding times specified in Company's Quality Assurance Program Plan, provided that Sample Delivery Acceptance occurs within 48 hours of sample collection. In cases where holding times are less than 48 hours, the Subcontractor will exercise due diligence to complete the analysis as quickly as possible, but will not be held responsible for meeting this requirement. In situations where the Subcontractor believes that the delays are excessive and may effect data quality, the Company will be notified, whereas a determination will be made whether or not to proceed with the analysis. This will be confirmed in writing and agreed upon by both parties, in which case the Company will waive any negligent claim for this analysis under the articles of this Agreement.

The liability and obligations of Subcontractor, and the remedies of Company in connection with any services performed by Subcontractor, will be limited to repeating such services, or refunding in full or in part fees paid by Company for such services. Subcontractor's obligations to repeat any services with respect to any samples will be contingent (with the exception below) on Company's providing, at the request of Subcontractor and at Company's expense, additional samples, if necessary. Any reanalysis request by Company generating results consistent with the original results will be at Company's expense. In the event that Subcontractor can demonstrate that sample matrix interference is the primary cause of nonconformance

to Subcontractor's warranties above, as set forth in Subcontractor's Quality Assurance Program Plan, these remedies are not available.

The exception to the contingency above is as follows: Subcontractor will reimburse Company for reasonable resampling costs where reanalysis is necessary due to laboratory contamination above levels acceptable as stated in the Quality Assurance Program Plan, or failure to comply with the Statement of Work or the QA/QC documents which are complete and agreed to at the time of the performance of the Work. Subcontractor will not be responsible for resampling where requirements change subsequent to the performance of the Work which result, directly, in whole, or in part, from any cause or circumstance beyond the reasonable control of Subcontractor. Such causes and circumstances include, but are not limited to, acts of God, acts of Client, acts or orders of any governmental authority, natural disasters, accidents, wars, civil disturbances, difficulties or delays in transportation, mail or delivery services, or any other cause beyond Subcontractor's reasonable control. Associated cost estimates for the resampling shall be defined by the Company. The Subcontractor shall have the right to address the cost estimates in accordance with Article 18, "Dispute Avoidance and Resolution" clause of this Agreement.

These warranties are the sole and exclusive warranties, express or implied, given by Subcontractor in connection with any services performed by Subcontractor, or any results generated from such services.

Liquidated Damages

In the event of Subcontractor's delay in the performance of the work hereunder, Subcontractor shall be required to pay Company the liquidated damage indicated herein, not as a penalty, but as a reasonable approximation agreed to by the parties of the damages suffered by the Company as a consequence of such delay. Subcontractor agrees to incur a late data assessment of 2% per day up to a maximum of 50% of the per unit cost of each sample for each day agreed upon reporting times are exceeded.

Late delivery penalties shall be based upon Subcontractor's delivery of analytical data in full after the contract required delivery date as determined by the date of receipt of the last sample of a Sample Delivery Group (SDG). Date of the last sample shall be considered that date when any outstanding issues have been resolved regarding sample integrity and/or requested analyses. If notice of issue has not been received by the Company's Subcontracts Representative within 48 hours of lab receipt of sample, it shall be deemed that the sample is satisfactory for analysis and that no issues exist. All analyses requested for an SDG must be received by the Company before a sample shall be considered delivered.

Liquidated Damages

Not required for Base Agreement. Option 1 is TBD.

Rust Constructors, Inc.

Government Contract Number W9128F-20-D-0008

Appendix B – Supplemental Prime Contract Terms and Conditions

GENERAL PROVISIONS

The provisions of the contract clauses referenced below, are incorporated in this Subcontract by reference with the same force and effect as though herein set forth in full. All such clauses shall, with respect to the rights, duties, and obligations of AECOM Technical Services (AECOM) and the Subcontractor hereunder, be interpreted and construed in such manner as to recognize and give effect to the contractual relationship between AECOM and the Subcontractor under this Subcontract and the rights of the U.S. Government with respect thereto under the Prime Contract from which such clauses are derived. As used therein, the term "the Contractor" and equivalent terms shall mean the Subcontractor and the terms "the Government" and "the Contracting Officer" and equivalent terms shall include AECOM and AECOM's authorized representative hereunder, respectively. The word "contract" and like terms shall mean this Subcontract. Most clauses contained herein contain applicability language. If the applicability language renders the clause not applicable for this particular Subcontract, the clause is considered self-deleting until such time as the circumstances change to make it applicable. At that time, the clause will be considered applicable and a part of this purchase Subcontract.

ALL ORDERS INCLUDE THE FOLLOWING:

Reference	Title
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52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)
52.204-02	Security Requirements (Aug 1996) Alternate II (Apr 1984)
52.204-09	Personal Identity Verification of Contractor Personnel (Jan 2011)
52.204-13	System for Award Management Maintenance (Oct 2018)
52.204-18	Commercial and Government Entity Code Maintenance (Jul 2016)
52.204-19	Incorporation by Reference of Representations and Certifications (Dec 2014)
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2019)
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)
52.211-10	Commencement, Prosecution, and Completion of Work (Apr 1984) Alt I (Apr 1984)
52.211-12	Liquidated Damages – Construction (Sep 2000)
52.215-17	Waiver of Facilities Capital Cost of Money (Oct 1997)
52.216-24	Limitation of Government Liability (Apr 1984)
52.217-08	Option to Extend Services (Nov 1999)
52.217-09	Option to Extend the Term of the Contract (Mar 2000)
52.219-08	Utilization of Small Business Concerns (Oct 2018)
52.222-21	Prohibition of Segregated Facilities (Apr 2015)
52.222-26	Equal Opportunity (Sep 2016)
52.222-30	Construction Wage Rate Requirements – Price Adjustment (None or Separately Specified Method) (Aug 2018)
52.222-50	Combating Trafficking in Persons (Jan 2019)
52.222-55	Minimum Wages Under Executive Order 13658 (Dec 2015)
52.222-62	Paid Sick Leave Under Executive Order (13706) (Jan 2017)
52.223-02	Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)
52.223-03	Hazardous Material Identification and Material Safety Data (Jan 1997)
52.223-05	Pollution Prevention and Right-to-Know Information (May 2011)
52.223-15	Energy Efficiency in Energy-Consuming Products (Dec 2007)

52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (Aug 2018)
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)
52.223-21	Foams (Jun 2016)
52.225-13	Restrictions on Certain Foreign Purchases (Jun 2008)
52.227-01	Authorization and Consent (Dec 2007)
52.227-02	Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)
52.227-04	Patent Indemnity-Construction Contracts (Dec 2007)
52.228-02	Additional Bond Security (Oct 1997)
52.228-11	Pledges of Assets (Aug 2018)
52.228-12	Prospective Subcontractor Requests for Bonds (May 2014)
52.228-14	Irrevocable Letter of Credit (Nov 2014)
52.228-15	Performance and Payment Bonds – Construction (Oct 2010)
52.232-20	Limitation of Cost (Apr 1984)
52.232-22	Limitation of Funds (Apr 1984)
52.232-39	Unenforceability of Unauthorized Obligations (Jun 2013)
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)
52.233-01	Disputes (May 2014) Alt I (Dec 1991)
52.233-03	Protest After Award (Aug 1996) Alt I (Jun 1985)
52.233-04	Applicable Law for Breach of Contract Claim (Oct 2004)
52.236-04	Physical Data (Apr 1984)
52.236-07	Permits and Responsibilities (Nov 1991)
52.236-11	Use and Possession Prior to Completion (Apr 1984)
52.236-12	Cleaning Up (Apr 1984)
52.236-14	Availability and Use of Utility Services (Apr 1984)
52.236-17	Layout of Work (Apr 1984)
52.236-26	Preconstruction Conference (Feb 1995)
52.242-01	Notice of Intent to Disallow Costs (Apr 1984)
52.242-04	Certification of Final Indirect Costs (Jan 1997)
52.242-05	Payments to Small Business Subcontractors (Jan 2017)
52.242-14	Suspension of Work (Apr 1984)
52.243-02	Changes – Cost-Reimbursement (Aug 1987) Alt III (Apr 1984)
52.243-04	Changes (Jun 2007)
52.244-02	Subcontracts (Oct 2010)
52.244-06	Subcontracts for Commercial Items (Jan 2019)
52.245-01	Government Property (Jan 2017)
52.245-09	Use and Charges (Apr 2012)
52.249-06	Termination (Cost-Reimbursement) (May 2004) Alt I (Sep 1996)
52.249-14	Excusable Delays (Apr 1984)
52.251-01	Government Supply Sources (Apr 2012)
52.252-02	Clauses Incorporated by Reference (Feb 1998)
52.252-04	Alterations in Contract (Apr 1984)
52.252-06	Authorized Deviations in Clauses (Apr 1984)
52.253-01	Computer Generated Forms (Jan 1991)
252 203-7000	Requirements Relating to Compensation of Former DoD Officials (Sep 2011)
252 203-7002	Requirement to Inform Employees of Whistleblower Rights (Sep 2013)
252 203-7003	Agency Office of the Inspector General (Dec 2012)
252 204-7000	Disclosure of Information (Oct 2016)
252 204-7003	Control of Government Personnel Work Product (Apr 1992)
252 204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)
252 211-7007	Reporting of Government-Furnished Property (Aug 2012)
252 223-7001	Hazard Warning Labels (Dec 1991)
252 223-7008	Prohibition of Hexavalent Chromium (Jun 2013)
252 225-7001	Buy American And Balance of Payments Program – Basic (Dec 2017)

252 225-7011 Restriction on Acquisition of Supercomputers (Jun 2005)
 252 225-7048 Export-Controlled Items (Jun 2013)
 252 227-7023 Drawings and Other Data to Become Property of Government (Mar 1979)
 252 227-7033 Rights in Shop Drawings (Apr 1966)
 252 231-7000 Supplemental Cost Principles (Dec 1991)
 252 232-7005 Reimbursement of Subcontractor Advance Payments – DOD – Pilot Mentor-Protégé Program (Sep 2001)
 252 232-7010 Levies on Contract Payments (Dec 2006)
 252 236-7000 Modification Proposals-Price Breakdown (Dec 1991)
 252 236-7001 Contract Drawings and Specifications (Aug 2000)
 252 236-7002 Obstruction of Navigable Waterways (Dec 1991)
 252 242-7006 Accounting System Administration (Feb 2012)
 252 243-7001 Pricing of Contract Modifications (Dec 1991)
 252 243-7002 Requests for Equitable Adjustment (Dec 2012)
 252 245-7001 Tagging, Labeling, and Marking of Government-Furnished Property (Apr 2012)
 252 245-7002 Reporting Loss of Government Property (Dec 2017)
 252 245-7003 Contractor Property Management System Administration (Apr 2012)
 252 245-7004 Reporting, Reutilization, and Disposal (Dec 2017)

ORDERS FOR CONSTRUCTION ALSO INCLUDE:

52.211-13 Time Extensions (Sep 2000)
 52.211-18 Variation in Estimated Quantity (Apr 1984)
 52.236-05 Material and Workmanship (Apr 1984)
 52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts (Apr 1984)
 52.236-19 Organization and Direction of the Work (Apr 1984)

ORDERS FOR CONSTRUCTION EXCEEDING \$2,000 ALSO INCLUDE:

52.222-06 Construction Wage Rate Requirements (Aug 2018)
 52.222-07 Withholding of Funds (May 2014)
 52.222-08 Payrolls and Basic Records (Aug 2018)
 52.222-09 Apprentices and Trainees (Jul 2005)
 52.222-10 Compliance with Copeland Act Requirements (Feb 1988)
 52.222-11 Subcontracts (Labor Standards) (May 2014)
 52.222-12 Contract Termination – Debarment (May 2014)
 52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014)
 52.222-14 Disputes Concerning Labor Standards (Feb 1988)
 52.222-15 Certification of Eligibility (May 2014)
 52.222-16 Approval of Wage Rates (May 2014)

ORDERS EXCEEDING THE MICRO-PURCHASE THRESHOLD ALSO INCLUDE:

52.219-28 Post-Award Small Business Program Rerepresentation (Jul 2013)
 52.222-03 Convict Labor (Jun 2003)
 52 232-23 Assignment Of Claims (May 2014)

ORDERS EXCEEDING \$10,000 ALSO INCLUDE:

52.222-27 Affirmative Action Compliance Requirements for Construction (Apr 2015)

ORDERS EXCEEDING \$15,000 ALSO INCLUDE:

52.222-36 Equal Opportunity for Workers With Disabilities (Jul 2014)

ORDERS EXCEEDING \$30,000 ALSO INCLUDE:

52 204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018)

ORDERS EXCEEDING \$35,000 ALSO INCLUDE:

52 209-06 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

ORDERS EXCEEDING \$100,000 ALSO INCLUDE:

52 222-35 Equal Opportunity for Veterans (Oct 2015)

ORDERS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD ALSO INCLUDE:

52.202-01 Definitions (Nov 2013)
 52.203-03 Gratuities (Apr 1984)
 52.203-05 Covenant Against Contingent Fees (May 2014)
 52.203-06 Restrictions on Subcontractor Sales to the Government (Sep 2006)
 52.203-07 Anti-Kickback Procedures (May 2014)
 52.203-08 Cancellation, Rescission, and Recover of Funds for Illegal or Improper Activity (May 2014)
 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014)
 52.204-04 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)
 52 215-02 Audit and Records-Negotiation (Oct 2010)
 52.222-02 Payment for Overtime Premiums (Jul 1990)
 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)
 52.222-54 Employment Eligibility Verification (Oct 2015)
 52.223-06 Drug-Free Workplace (May 2001)
 52.228-05 Insurance – Work On a Government Installation (Jan 1997)
 52.229-03 Federal, State and Local Taxes (Feb 2013)
 52.236-02 Differing Site Conditions (Apr 1984)
 52.236-03 Site Investigation and Conditions Affecting the Work (Apr 1984)
 52.236-06 Superintendence by the Contractor (Apr 1984)
 52.236-08 Other Contracts (Apr 1984)
 52.236-09 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)
 52.236-10 Operations and Storage Areas (Apr 1984)
 52.236-13 Accident Prevention (Nov 1991)
 52.236-15 Schedules for Construction Contracts (Apr 1984)
 52.236-21 Specifications and Drawings for Construction (Feb 1997) Alt I (Apr 1984)
 52.242-13 Bankruptcy (Jul 1995)
 52.244-05 Competition In Subcontracting (Dec 1996)
 52.246-12 Inspection of Construction (Aug 1996)
 52.247-01 Commercial Bill of Lading Notations (Feb 2006)
 52.248-03 Value Engineering – Construction (Oct 2015)
 52.249-02 Termination for Convenience of the Government (Fixed-Price) (Apr 2012)
 52.249-10 Default (Fixed-Price Construction) (Apr 1984)
 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Dec 2008)

ORDERS EXCEEDING \$150,000 ALSO INCLUDE:

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)
 52.222-04 Contract Work Hours and Safety Standards – Overtime Compensation (May 2018)
 252 209-7004 Subcontracting With Firms That are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism (Oct 2015)

ORDERS EXCEEDING \$550,000 ALSO INCLUDE:

52.209-09 Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018)

ORDERS EXCEEDING \$700,000 ALSO INCLUDE:

52.219-09 Small Business Subcontracting Plan (Aug 2018)
 52.219-09 Small Business Subcontracting Plan (Deviation 2018-00018) (Aug 2018) Alternate II
 52.219-16 Liquidated Damages—Subcontracting Plan (Jan 1999)
 252 219-7003 Small Business Subcontracting Plan (DoD Contracts) (Dec 2018)

ORDERS EXCEEDING \$750,000 ALSO INCLUDE:

52.242-03 Penalties for Unallowable Costs (May 2014)

ORDERS EXCEEDING \$1,000,000 ALSO INCLUDE:

252 222-7006 Restrictions on the Use of Mandatory Arbitration Agreements (Dec 2010)

ORDERS EXCEEDING \$1,500,000 ALSO INCLUDE:

52.236-01 Performance of Work by the Contractor (Apr 1984)

ORDERS EXCEEDING \$2,000,000 ALSO INCLUDE:

52.215-11 Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Aug 2011)
52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (Deviation 2018-O0015) (Jul 2018)
52.215-21 Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data—Modifications (Oct 2010)
52.215-23 Limitations on Pass-Through Charges (Oct 2009)
52.230-02 Cost Accounting Standards (Deviation 2018-O0015) (Jul 2018)
52.230-06 Administration of Cost Accounting Standards (Jun 2010)

ORDERS EXCEEDING \$5,500,000 ALSO INCLUDE:

52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)
52.210-01 Market Research (Apr 2011)
252 203-7004 Display of Hotline Posters (Oct 2016)

ORDERS VALUED LESS THAN \$7,008,000 ALSO INCLUDE:

52.225-09 Buy American Act – Construction Materials (May 2014)

ORDERS EXCEEDING \$20,000,000 ALSO INCLUDE:

252 234-7002 Earned Value Management System (May 2011)

Additional Clauses:

Supplementary Conditions (Special Contract Requirements)

1.1 – 7) Release of Information:

The Contractor shall not, unless authorized in writing by the Contracting Officer, release or provide any information or interpretation concerning data prepared under this contract to prospective construction contractors, manufacturers, or suppliers for their use in bidding or submitting quotations.

1.1 – 8) Buy American Act:

Where the Contractor has specified an item by brand name or equal he shall verify that it meets the requirements of the "Buy American Act". Construction materials which are not domestic as defined by the Buy American Act and FAR 25 201 may not be incorporated in the project, and therefore may not be specified, unless an exception is obtained pursuant to FAR 25.202.

Such an exception must be obtained before a non-domestic construction material may be specified. A foreign construction material should not be cited in a brand name or equal specification, even as an example of a product which would meet the specification, unless an exception has been obtained.

Manpower Reporting

Contractors may direct technical questions to the "Send an Email" link at website or email contractormanpower@hqda.army.mil for current information on CMRA. Information regarding changes to the reporting process, when data should be entered, general policy information, how data is protected, and how to enter certain data can be found under the Frequently Asked Questions (FAQ) section at the CMRA website. Reporting inputs will be for the labor executed during the period of performance during each Government fiscal year (FY), which runs October 1 through September 30. While inputs may be reported any time during the FY, all data shall be reported no later than October 31 of each calendar year, beginning with 2013.

The Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs) operates and maintains a secure Army data collection site where the contractor will report ALL contractor manpower (including subcontractor manpower) required for performance of this contract. The contractor is required to completely fill in all the information in the format using the following web address: <https://ecmra.mil> (<https://cmra.army.mil>). The required information includes: (1) Contracting Office, Contracting Officer, Contracting Officer's Technical Representative; (2) Contract number, including task and delivery order number; (3) Beginning and end dates covered by reporting period; (4) Contractor name, address, phone number, e-mail address, identity of contractor employee entering data; (5) Estimated direct labor hours (including sub-contractor); (6) Estimated direct labor dollars paid this reporting period (including sub-contractor); (7) Total payments (including subcontractor); (8) Predominant Federal Service Code (FSC) reflecting services provided by contractor (and separate predominant FSC for each sub-contractor if different); (9) Estimated data collection cost; (10) Organizational title associated with the Unit Identification Code (UIC) for the Army Requiring Activity (the Army Requiring Activity is responsible for providing the contractor with its UIC for the purposes of reporting this information); (11) Locations where contractor and sub-contractors perform the work (specified by zip code in the United States and nearest City, Country, when in an overseas location, using standardized nomenclature provided on website); (12) Presence of deployment or contingency contract language; and, (13) Number of contractor and sub-contractor employees deployed in theater this reporting period (by country). As part of its submission, the contractor will also provide the estimated total cost (if any) incurred to comply with this reporting requirement. Reporting period will be the period of performance not to exceed 12 months ending September 30 of each government fiscal year and must be reported by 31 October of each calendar year. "

*Note: Information from the secure web site is considered to be proprietary in nature when the contract number and contractor identity are associated with the direct labor hours and direct labor dollars. At no time will any data be released to the public with the contractor name and contract number associated with the data. For internal Army analysis, the reports and queries from the database shall not contain proprietary data.

Appendix C – Statement/Scope of Work

Earthwork

The subcontractor shall provide sufficient resources, including labor, equipment, supplies, and incidentals to perform earthwork operations on the RDI2 MATOC L-536 Levee Repair Project as instructed by Rust Constructors, Inc. Rust Constructors will provide project oversight, planning and scheduling, daily work assignments, and USACE required cost and quantity tracking and reporting (with Subcontractor support). Subcontractor shall provide experienced personnel (including foreman), and needed materials, supplies, equipment, controls and instruments to perform Base and Optional Scope of Work (SOW), as defined herein, in accordance with the Scope of Work Document. All work shall be performed in accordance with applicable federal, state, and local requirements.

The scope of work is broken into a Base Scope and an Optional Scope. The Base Scope of Work consists of levee repairs along the Rock Creek tie back levee (Station RC 250+00L to RC 492+00L) and the main stem levee between the tie back (Station 503+44.9) to critical section loss C (approximate Station 575+00). The Optional Scope of Work, which may be added to the contract pending real estate acquisition, includes construction of a setback levee between critical section loss C and the Mill Creek tie back levee.

Major Features scope include:

- Levee Breach Repair
- Major Erosion of Levee Section (Critical Section Loss)
- Levee Crest Reconstruction
- Levee Slopes and Seepage Berm Erosion Repairs
- Riverside Scour Repair
- Levee Ramp Repairs
- Setback Levee *(Option Only)*
- Toe Drain Construction *(Option Only)*
- Borrow Availability, Investigations and Development
- Haul Roads
- Debris and Sediment Removal
- Clearing (Option Only)
-

Special Provisions

- Subcontractor operating equipment rates shall include equipment maintenance costs, including labor, equipment, parts, oil, grease, etc.
- Equipment will be reimbursed for working hours only. No reimbursement will be provided for equipment idle or down time (i.e. storage, transportation – mobilization demobilization, assembly, or maintenance repairs).
- Subcontractor not guaranteed entire scope of earthwork scope of work, nor Option 1.
- Failure to perform work in a quality and timely could result termination of contract.
- Contractor has right to dismiss Subcontractor craft personnel for any reason, including tardiness, poor performance, poor workmanship, unsafe acts, safety violations, accidents, near misses, etc.
- Weekly Certified Payroll will be required.

- Subcontractor shall provide rigging liability insurance (if applicable).
- Drug Testing will be implemented by Rust Constructors. Subcontractor to abide by drug testing program and procedures.
- Rust Constructors shall provide Personal Protection Equipment (PPE), excluding footwear.
- Rust Constructor shall provide temporary sanitary services (i.e. porta toilets).
- Subcontractor equipment shall be in good working condition at all times and must pass inspection upon delivery to site. Subcontractor shall perform daily pre-shift equipment inspections, noting any equipment damage, required repairs, and operations issues.
- Attend required daily field coordination meetings.
- Attend weekly progress and planning meetings (as required).
- Perform daily "tool box" meetings at the work site (including AHA development)
- Implement daily pre-shift "stretch-n-flex" program.
- Comply w/ Rust Constructors accident reporting and investigation protocol.
- Subcontractor shall provide a daily report, including:
 - o Operator name and hour worked
 - o Equipment (description and #) and hour worked. Include non-working hours (e.g. idle time & maintenance / repair time)
 - o Labor & Equipment time will be coded to specific features of work, as defined by Rust Constructors Code of Accounts (to be provided)
 - o Quantities of material placed (coordinate w/ Rust Field Personnel on method of quantity tracking; for example haul truck or scarper load counts
 - o Weather conditions (sunny, rain, overcast, temperature, etc.)
 - o Identify construction impacts or obstructions to work w/ brief description.
 - o Working location on site (i.e. feature or stationing)
 - o Accidents, injuries, or near misses
 - o Quality control issues
- Subcontractor to maintain hourly rates through Option SOW, if exercised by USACE.

Site Location

- Site Map, illustrating site access and major features of work attached.

Appendix D – Pricing / Fee Schedule of Values

[illegible]

Appendix E – Waivers and Releases

For Subcontractor to provide to AECOM with invoices.

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from AECOM in the sum of \$

_____ payable to (Payee or Payees of Check)

_____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of (Owner) _____ located at (Job Description) _____

under subcontract number _____ to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to (Customer) _____ through (Date) _____

_____ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Company Name: _____

Signature: _____

Title: _____

Date: _____

For Subcontractor to provide to AECOM with FINAL invoice.

**CONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT**

Upon receipt by the undersigned payment from AECOM in the sum of \$_____ payable to (Payee) _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of (Owner) _____ located at (Job Description) _____ under subcontract number _____.

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$_____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned. Full payment on Subcontract is \$_____.

Company Name: _____

Signature: _____

Title: _____

Date: _____

For Lower tier Subcontractors and Vendors to provide to Subcontractor to be submitted with Final AECOM invoice.

**UNCONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT
LOWER-TIER SUBCONTRACTORS AND VENDORS**

The undersigned has been paid in full for all labor, services, equipment or material furnished to (Customer)
_____ on the job of (Owner) _____ located at (Job Description)
_____ under Subcontract Number _____ and does hereby waive and release
any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims
for extra work in the amount of \$ _____.

Company Name: _____

Signature: _____

Title: _____

Date: _____

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE
BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF
YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A
CONDITIONAL RELEASE FORM.

For Lower tier Subcontractors and Vendors to provide to Subcontractor to be submitted with AECOM invoices.

**UNCONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT
LOWER-TIER SUBCONTRACTORS AND VENDORS**

The undersigned has been paid and has received a progress payment in the sum of \$ _____ for labor, services, equipment, or material furnished to (Customer) _____ on the job of (Owner) _____ located at (Job Description) _____ under subcontract number _____ and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to (Customer) _____ through (Date) _____ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Company Name: _____

Signature: _____

Title: _____

Date: _____

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM

Appendix F –

AECOM Subconsultant Anti-Bribery, Corruption, and Anti-Human Trafficking

Compliance Terms and Conditions

(1) Compliance with Anti-Bribery Laws

Subconsultant represents and warrants that it will, with respect to its winning, retaining and performing work under this Agreement, comply with the U.S. Foreign Corrupt Practices Act (“FCPA”), the U.K. Bribery Act (“UKBA”) and all applicable local anti-bribery (and anti-corruption) laws (collectively the “Anti-Bribery Laws”). In accordance with such Laws, Subconsultant agrees to not, with respect to its winning, retaining and performing work under this Agreement, offer, pay, promise to pay or authorize another to pay any money, make any gift or provide anything of value to any foreign official, any foreign political party or official thereof, or any candidate for foreign political office (collectively, “Foreign Officials,” as that term is further defined under the FCPA), or any person acting in a commercial capacity, with the intent to improperly obtain or retain business or any commercial or governmental advantage.

(2) Books & Records and Audit

Subconsultant agrees to keep accurate and complete cost, correspondence, and other records related to this Agreement. Subconsultant shall make such records available to AECOM upon 10 calendar days’ written notice.

(3) Notice and Material Breach

Subconsultant agrees to promptly notify AECOM in the event it becomes aware of or discloses any potential violation of Anti-Bribery Laws, including but not limited to violations of the FCPA and UKBA, related to this Agreement. Subconsultant further agrees that if it is found to have violated Anti-Bribery Laws by a governmental body empowered to make such a finding, Subconsultant shall have materially breached this Agreement. Subconsultant further agrees that a government investigation of Subconsultant for violation of Anti-Bribery Laws related to this Agreement may be deemed a material breach of this Agreement if, in AECOM’s sole good-faith judgment, the investigation materially impairs AECOM’s or Subconsultant’s ability to perform work under this Agreement.

(4) No Assignment

Subconsultant shall not, without AECOM’s prior written consent, assign this Agreement to any third party.

(5) Subconsultants

Subconsultant shall not engage any consultants, contractors, agents or representatives in connection with this Agreement without URS’s prior written approval. Subconsultant agrees, prior to engaging any such parties, and at its sole expense, to conduct due diligence on such parties in accordance with AECOM’s Anti-Bribery due diligence standards. Subconsultant shall provide AECOM with copies of its due diligence, if requested to do so, within 3 calendar days of AECOM’s request.

(6) Limitations on Gifts and Entertainment

Subconsultant shall not provide gifts, meals, travel or entertainment to any Foreign Official or any person acting in a commercial capacity in connection with Subconsultant’s winning, retaining or performing work under this Agreement. Any exception to this provision must be agreed to by AECOM in writing prior the provision of any benefit to a Foreign Official or person acting a commercial capacity.

(7) No Cash Payments

All payments over US \$250 (individually or in a connected series of payments) by Subconsultant (and its lower tier Subconsultants) made in connection with this Agreement shall be made by check, bank transfer, credit card or similar documented form of payment.

(8) Representations and Warranties

Subconsultant represents and warrants that it: (i) has not used and will not use an agent or similar representative in connection with winning, retaining or performing work related to this Agreement (other than where required by local law); (ii) has not and will not make improper payments of any kind, including so-called “facilitation” or “speed money” payments to expedite government processes, in connection with winning, retaining or performing work related to this Agreement; and (iii) does not employ or have close personal ties to any Foreign Official involved with selecting or retaining AECOM or its Subconsultants for the work that is the subject of this Agreement.

(9) Indemnity

Subconsultant agrees to defend, indemnify and hold AECOM harmless from and against any and all claims, demands, causes of action, losses, costs, damages and expenses, including reasonable attorney’s fees, expert and consultants’ fees, arising out of or in any way related to its or its subconsultants’ actual or alleged violations of the Anti-Bribery laws.

(10) Compliance with Anti-Human Trafficking Laws

Subconsultant agrees to certify annually that, after having conducted due diligence, either (1) to the best of the subcontractor’s knowledge and belief, neither it nor any of its agents, subcontractors, or their agents, has engaged in any activities in violation of FAR 52.222-50(i)(A) and (B); or (2) if abuses relating to any of the prohibited activities identified in FAR 52.222-50(b) have been found, the subcontractor has taken the appropriate remedial and referral actions.

(11) Flowdown Provision

Subconsultant agrees to incorporate the Anti-Bribery and Anti-Human Trafficking provisions set forth herein into all lower tier subcontracts it executes in connection with this Agreement.

(12) Termination

If, at any time, AECOM becomes aware of bribery, corruption-related information, or creditable indication of noncompliance with the Anti-Human Trafficking Regulations associated with Subconsultant that, in AECOM’s sole good-faith judgment, may impair AECOM’s or Subconsultant’s ability to perform work under this Agreement, or may otherwise negatively impact AECOM’s reputation, AECOM may terminate Subconsultant without penalty or further obligation. If AECOM so terminates Subconsultant, and it is later finally determined by a court of competent jurisdiction that the termination was not proper, then the termination shall be deemed a termination for convenience and AECOM shall engage in good-faith discussions with Subconsultant to determine whether and to what extent Subconsultant is entitled to payment for completed work that would otherwise have been due and payable under the Agreement.

Type / Print Name and Title

Signature

Date

Appendix G – Project Controls Requirements

1.0 Project Schedule

The project schedule will include the scope of work in its entirety. Rust Constructors and Subcontractor will conduct interactive planning sessions to develop, update and maintain the project schedule. Time is of the essence, consequently the requirement to complete the awarded scope of work is the critical objective.

The Rust Constructors will develop the project schedule in Primavera P6 at a Level III. The schedule will consider as many days, hours and shifts per week as deemed necessary to complete the scope of work on-time. Percent complete (%) for each activity will be updated based on quantities installed (physical progress) in the field. The remaining duration for each activity, whether started or not, will be updated based on progress to-date, prevailing productivity, and resource availability. Subcontractor is required to participate in the daily schedule updates with Rust Constructors Superintendent.

2.0 Project Quantities

The estimate quantities will be used as a baseline for the tracking and trending of materials appropriate to the scope of work. The specific template to use for reporting daily quantities will be provided by Rust Constructors. Rust Constructors and Subcontractor will agree on the specific items to track progress. Subcontractor is required to report daily quantities as part of the Daily Report.

3.0 Project Work Breakdown Structure / Code of Accounts

The WBS defines and organizes the complete scope of work of the project (All locations). It establishes the "level of control" where the project is estimated, scheduled, budgeted, actual costs captured, performance measured, to-complete cost estimated, and variances analyzed. Subcontractor is required to present all quantities, hours and cost in accordance to the pre-established WBS / Code of Accounts provided by Rust Constructors and detailed in the Schedule of Values included in this agreement.

4.0 Manpower and Equipment Hours

Subcontractor is required to report daily manhours and equipment hours as part of the Daily Report. The manpower and equipment hours will be broken down into locations, disciplines and functions to align with the project Schedule of Values.

5.0 Change Management

In the event that Rust Constructors gives direction for a new scope, either written or oral, the Subcontractor will assist Rust Constructors with "Potential Deviation Notice (PDN)" documentation, evaluation and estimating efforts. Subcontractor will present the estimate of the potential change in the form provided by Rust Constructors. The document will include a detailed cost breakdown for all the proposed items of work and the potential time impact. All approved PDNs will be formalized by the full execution of a "Change Order" and adjusting Subcontractor budgets accordingly.

Project Controls Requirements

6.0 Basis for Payment

Subcontractor will present a progressed schedule of values for payment in the template provided by Rust Constructors and within the frequency specified in this agreement. Each line within the schedule of values will be progressed in accordance to the physical progress in the field. Hours or Units completed for each line item will be multiplied by their contractual Unit Rate. The sum of all progressed line items will result in the total amount to be paid to the Subcontractor as progress payment.

7.0 Daily Report

Subcontractor will submit a Daily Progress Report to the Rust Constructors Superintendent at the end of the shift. Rust Constructors will provide the template to use for this report. The report will include at a minimum the following sections:

- ☐ Summary of work completed for the day
- ☐ List of people and equipment used
- ☐ Quantities installed/moved during the shift
- ☐ Timesheets (labor and equipment)
- ☐ Changes and delays encounter on site

Electronic Document will be provided upon request

FROM: 2/1/2020
TO: 3/2/2020

DATE _____

Company Name: _____

Address: _____

Phone: _____

Contact: _____

Email: _____

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